

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 241. 30.

THE RELOJ CATTLE COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

FILED FEBRUARY 15, 1909.

(17,643.)

(17,643.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 204.

THE RELOJ CATTLE COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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- 1 UNITED STATES OF AMERICA, }
Territory of Arizona, } ss:

Be it remembered that heretofore, to wit, on the twenty-ninth day of May, one thousand eight hundred and ninety-seven, the Reloj Cattle Company, by its attorney, Frank H. Hereford, Esquire, filed in the office of the clerk of the court of private land claims at Tucson, in the Territory of Arizona, a petition, in which the said The Reloj Cattle Company is plaintiff and The United States of America and E. J. Roberts are defendants; which said petition is in the words and figures following, to wit:

- 2 UNITED STATES OF AMERICA, }
Territory of Arizona. }

In the United States Court of Private Land Claims.

THE RELOJ CATTLE COMPANY, a Corporation, Plaintiff,	}
v.	
THE UNITED STATES OF AMERICA and E. J. ROBERTS, Defendants.	

Petition.

Now comes your petitioner, The Reloj Cattle Company, and respectfully represents as follows:

I.

That The Reloj Cattle Company, your petitioner, is a corporation organized for the purpose of, among other things, the acquisition and ownership of lands and water rights, for handling, breeding, and raising live stock; and the said corporation in furtherance of the purposes of its organization exists, and has existed since the 24th day of September, 1885, under and by virtue of the laws of the Territory of Arizona.

II.

That the defendant E. J. Roberts is a resident of the county of Cochise, Territory of Arizona.

III.

That your petitioner, The Reloj Cattle Company, is the owner in fee and in possession of that certain tract of land lying, being, and situate in the county of Cochise, Territory of Arizona, known and called the San Pedro land grant or private land claim, which said tract of land lies in the valley on either side of the San Pedro river, easterly from the Huachuca mountains, and immediately north of the boundary line between the Republic of Mexico and the

3 United States of America, and is more particularly described as follows, to wit: Commencing at an old monument six (6) feet in diameter situate on the south bank of a small wash which

drains northwesterly and which is called the Canada de Bachata, which is the northeast corner of the said grant, and from which said monument the highest peak of the San Jose mountains, in the State of Sonora, Republic of Mexico, bears south nineteen (19) degrees 23' east 62,123 feet, and from which said monument the highest peak of the Huachuca mountain, situated in Cochise county, Territory of Arizona, bears south 83 degrees 42' west, running thence and from said monument north 85 deg. 50' west 52,700 feet to the northwest corner monument of the said grant, the remains of which are on a mesa at the foot of the east slope of the Huachuca mountains; from last-named monument the highest peak of the Huachuca mountains aforesaid bears south 62 deg. 25' west 26,000 feet; thence and from last named monument south 2 deg. 30' east 34,150 feet to the international line separating the United States of America from the Republic of Mexico, from which point on the international line the original southwest corner monument of the said San Pedro grant bears south 2 deg. 30' east 12,500 feet; thence and from said point on said international line east along the said international line 6,750 feet to a monument on the said international line marking the same, situated west of the San Pedro river; thence east along the said international line 680 feet to the said San Pedro river; thence east along the said international line 27,470 feet to a point on the said international line where the said international line intersects the east side line of the said San Pedro grant, from which said last-named point the south corner monument of the said San Pedro grant bears south 7 deg. west 22,600 feet; thence and from said last-named point north 7 deg. east 30,500 feet to the northeast corner monument of the said San Pedro grant and the place of beginning. The portion of the said grant hereinabove described and situated within the United States of America contains thirty-seven thousand (37,000) acres.

4

IV.

That your petitioner holds the fee and possession of the said described tract of land by virtue of certain instruments of writing, the first of which is known generally and is hereinafter designated as the grant title, and the others being various mesne conveyances from Rafael Elias, the owner of the said original grant title and his successors in possession and title.

V.

That the said instrument in writing called, as aforesaid, the grant title bears date the 8th day of May, 1833, and was duly made, executed, and delivered by Jose Maria Mendoza, the treasurer general of the free and sovereign State of Sonora, Republic of Mexico, in the name of the sovereignty of the said State of Sonora, under and by virtue of article 11 of the general sovereign decree numbered 70, which was passed on the 4th day of August, 1824, by the sovereign constituent congress of the United States of Mexico, which article concedes to the States of the Republic of Mexico the rents or revenues which by said law are not reserved to the general government,

one of which revenues is the vacant lands within the States of the Republic, thereby confirming to the States the lands hereinabove described.

By a law passed May 20th, 1825, numbered 30, and other decrees subsequent thereto the constituent congress of the State of Sonora and Sinaloa prescribed regulations for the sale of these lands of the said States of the Republic of Mexico.

VI.

In accordance with and under and by virtue of these said laws and decrees such proceedings were regularly and lawfully had in the matter of this tract of land that the said treasurer of the State of Sonora, as was prescribed by law, and in the name of the sovereignty of the said State, did duly and regularly sell and convey in fee and possession to Rafael Elias the land hereinbefore described and known as the San Pedro grant, for the sum of one hundred and ninety dollars (\$190) and other good and valuable considerations, as is more fully set forth in the said grant title.

5

VII.

That the initiatory proceedings in the steps taken to obtain this grant title to the said described land was a petition dated in the year 1820 or 1821, addressed to the governor intendente, who was then and there the officer of the Spanish government in charge of and having exclusive jurisdiction in the matter of the sales of public lands in the precinct of Fronteras, in which precinct the lands petitioned for were situated. The said petition was made and signed by Jose Jesus Perez; that thereafter proceedings of survey, appraisement, information of competency, and publication were taken on this petition, as required by the instructions and laws of the royal ordinances of intendente of December 4th, 1786, and that thereafter and on the 5th day of July, 1822, at the city of Arispe, in the said State of Sonora, the tract of land petition- for and hereinabove described was sold by the proper officers of the Republic of Mexico to Don Jose Jesus Perez for the said sum of one hundred and ninety dollars (\$190).

That on July 6th, 1822, the honorable intendente *ad interim* of the province of Sonora and Sinaloa, Minister and Treasurer d. Ygnacio de Bustamente y Velasco, on submission to him of the foregoing proceedings, made order that the said Jose Jesus Perez pay into the treasury the sum of two hundred and eight dollars and one cent (\$208.01), being the said one hundred and ninety dollars (\$190) costs and charges, and that report be made of the same to the superior board of the treasury for its approbation or determination.

That the said sale was on July 7th, 1822, by the board of the provincial imperial treasury, sitting at the said city of Arispe, legally, publicly, and solemnly approved and referred to the superior board of the treasury for its approval or determination; that thereafter and within the proper time and to the proper officer the said sum

of one hundred and ninety dollars (\$190), together with the other costs and charges incident thereto, was paid into the national treasury of the Republic of Mexico.

6

VIII.

That before the said superior board of the treasury could approve the said sale the said board was abolished, and no further proceedings were taken in the matter of the sale till October 25th, 1832, when proceedings were instituted to transfer the rights and title of the said Jose Jesus Perez to Rafael Elias, and to have the formal title to the said lands issued to the said Rafael Elias, and in compliance therewith, on the 28th day of May, 1833, the said State of Sonora, the treasurer general of the said State of Sonora, issued to the said Rafael Elias the final testimonial or evidence of title of said said Pedro grant, and the same was thereupon duly recorded in the proper records of the said State of Sonora.

12

That the map hereto attached and made a part of this petition as Exhibit "A" was made by H. C. Howe from the plats of the grant-title papers and from observations taken by the said H. C. Howe from the original monuments marking the corners of the said grant to prominent mountain peaks in the vicinity and to monuments of the international boundary line between the United States of America and the Republic of Mexico, which said map shows, as nearly as may be, the location, boundaries, and number of acres of the said land grant; and the plaintiff herein will, before the trial of this action, ask leave to file in this honorable court a new map more fully describing the said land grant, in accordance with an actual survey from a United States mineral monument to the monuments and points of boundary of the said San Pedro grant, which last survey is not yet completed.

That the highest grade of intelligence is attained by the
the said child was witnessed in the above-mentioned fact that the
possessors of it were the most of the nation, and that the
highest grade of intelligence was attained by the said child.

amendatory or in extension thereof or supplemental thereto, certain of the grantors of your petitioner filed their petitions for a survey of the said San Pedro grant in the office of the U. S. surveyor general for the Territory of Arizona; that there is also in said office filed and of record a report made by Professor R. C. Hopkins, a duly and regularly authorized agent of the United States of America in land-grant matters, according to which said report of the said Professor Hopkins the expediente of this said land grant, containing fifty (50) pages, was found in the proper places, in the proper archives, and on the proper paper, and that all the proceedings of survey, valuation and sale were regular, the handwriting and signatures were genuine, and the certificate showing the payment of the amount at which the land had been valued and the record of the transfer between the said Peter and the said Rafael Elias and the issuance of legal title to the said Rafael Elias were all found properly recorded in proper form, in the proper places, among the archives of the said State of Sonora, in the said Republic of Mexico. And your petitioner further represents that the report of the said agent, Hopkins, fully established the genuine character of the original title papers of said grant, and that the statements in the said report of the said Hopkins are true, and that said grant is and at the time of the execution of the treaty known as the Gadsden treaty was located and duly recorded in the archives of Mexico; that there

XII.

That the original grantees of this said grant and their successors in interest up to the time of the Gadsden treaty were Mexicans and citizens of the Republic of Mexico.

XIII.

That all the steps and proceedings in the matter of the petition, survey, appraisement, offers, auction, and sale of said grant and the payment therefor were regular, complete, and lawful, and vested a perfect title in the said grantee of said grant; that the said grantee at the time went into actual possession, use, and occupation of said grant, and erected proper monuments, and that the said grantee and their descendants and regular representatives have continued ever since until the present time in the actual possession, use, and occupation of the same, and are now seized and possessed in fee thereof; that said grant document is a complete definitive grant in fee by way of sale, coupled with the conditions subsequent, not to abandon the same for a longer period than three years without good reason, which abandonment would subject the tract to adjudication to any third parties who might apply for or denounce the same; that no part of said grant was ever claimed, and that your petitioner is entitled to the confirmation of so much of said grant as lies in the Territory of Arizona in accordance with the metes and bounds set forth in the original survey and grant of the same, which metes and bounds, your petitioner avers, are correctly represented by the map of said grant hereto attached.

Your petitioner further alleges that the lands claimed by it are all the lands embraced within the original survey of said grant lying within the Territory of Arizona and the boundaries established and described therein, and that the said lands are the lands embraced within the accompanying map of said grant filed herewith. Your petitioner further avers in substantiation and belief that there is no person in possession of any part of the said grant, or who could be the possessor of said grant, except the U. S. Government.

XIV.

That your petitioner prays that the validity of the said grant may be established and declared valid, and that the title of your petitioner to said lands be declared valid, and

MAP(S) IS/ARE TOO LARGE TO BE FILMED

your petitioner prays for such other and further relief as to this honorable court may seem meet and proper in the premises.

FRANK H. HEREFORD,

Attorney for the Petitioner.

Endorsements: Case No. 10, file No. 1. United States court of private land claims, Territory of Arizona. The Reloj Cattle Co. vs. The United States of America and Roberts. Petition. Filed in the office of the clerk, court of private land claims, May 29, 1897. James H. Reeder, clerk, by R. L. Long, deputy.

11

MAP.

PLAINTIFF'S EXHIBIT "A"—A PART OF PETITION.

(Here follows map marked page 11.)

12 That thereafter, to wit, on the 5th day of June, 1897, a summons was issued; which said summons, with all endorsements, is in the following words and figures, to wit:

Summons.

UNITED STATES OF AMERICA, } ss:
District of Arizona,

In the U. S. Court of Private Land Claims.

THE RELOJ CATTLE COMPANY, a Corporation, Plaintiff,	}	Petition Filed in the Clerk's Office This 29th Day of May, A. D. 1897.
<i>versus</i>		
THE UNITED STATES OF AMERICA and E. J. Roberts, Defendants.	}	

The President of the United States of America to the United States of America and E. J. Roberts, Greeting:

You and each of you are hereby notified that an action has been brought in said court by The Reloj Cattle Company (a corporation), plaintiff, against you, as defendants, under the provisions of the act of the Congress of the United States entitled "An act to establish a court of private land claims, and to provide for the settlement of private land claims in certain States and Territories," approved March 3d, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court within thirty days after the service of this summons upon you; and if you fail so to do, the said plaintiff will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at the city of Tucson, in said district, this fifth day of June, A. D. 1897, and of the Independence of the United States the 120th year.

[Seal Court of Private Land Claims, Tucson, Arizona.]

JAMES H. REEDER, *Clerk*,
 By R. L. LONG, *Deputy Clerk*.

13 [Endorsed:] F. 5. Gen. No., 10. U. S. court of private land claims. The Reloj Cattle Company (a corporation), plaintiff, *versus* The United States of America and E. J. Roberts, defendant. Summons. Filed this 13 day of May, A. D. 1899. James H. Reeder, clerk, by R. L. Long, deputy clerk. Frank H. Hereford, of Tucson, attorney for plaintiff.

Proof of Service.

UNITED STATES OF AMERICA, ss :

SANTA FÉ, N. M., June 9th, A. D. 1897.

I accept service of this summons on behalf of the U. S.

MATT. G. REYNOLDS,

U. S. Attorney, C. P. L. C.

14 And be it further remembered that thereafter, to wit, on the thirteenth day of May, A. D. 1899, the said plaintiff filed an amended petition; which said petition is in the words and figures, to wit :

UNITED STATES OF AMERICA, }
Territory of Arizona. }

In the United States Court of Private Land Claims.

THE RELOJ CATTLE COMPANY, a Corporation, Plaintiff,

vs.

THE UNITED STATES OF AMERICA and E. J. ROBERTS, Defendants. }

Petition.

Now comes your petitioner, The Reloj Cattle Company, and, by leave from the court first had and obtained, files this its amended petition, and represents as follows :

I.

That The Reloj Cattle Company, your petitioner, is a corporation organized for the purpose of, among other things, the acquisition and ownership of lands and water rights, for handling, breeding, and raising live stock; and the said corporation, in furtherance of the purposes of its organization, exists and has existed since the 24th day of September, 1885, under and by virtue of the laws of the Territory of Arizona.

II.

That the defendant E. J. Roberts is a resident of the county of Cochise, Territory of Arizona, but affiant is informed and believes and for that reason alleges that the said E. J. Roberts claims title to such portions of the said land grant as he occupies under some title, permission, or agreement claimed by him to have been given him by one of the grantors of your petitioner.

III.

That your petitioner, The Reloj Cattle Company, is the owner in fee and in possession of that certain tract of land lying, being, and situate in the county of Cochise, Territory of Arizona, known and called the San Pedro land grant or private land claim, which said tract of land lies in the valley on either side of

the San Pedro river, easterly from the Huachuca mountains, and immediately north of the boundary line between the Republic of Mexico and the United States of America, and is more particularly described as follows, to wit:

Commencing at an old monument six (6) feet in diameter, situated on the south bank of a small wash which drains northwesterly and which is called the Canada de Bachata, which is the northeast corner of the said grant, and from which said monument the highest peak in the San Jose mountains, in the State of Sonora, Republic of Mexico, bears south nineteen (19) degrees thirty minutes (30') east about 62,123 feet, and from which said monument the highest peak of the Huachuca mountains, situated in Cochise county, Territory of Arizona, bears south 83 degrees 30' west, running thence and from said monument northwest about 52,700 feet to the northwest corner monument of the said grant, the remains of which are on a mesa at the foot of the east slope of the Huachuca mountains; from last-named monument the highest peak of the Huachuca mountains aforesaid bears south 65 degrees 50' west about 26,000 feet; thence and from last-named monument southeast about 34,150 feet to the international line separating the United States of America from the Republic of Mexico, from which point on the international line the original southwest corner monument of the said San Pedro grant bears south 2 degrees 30' east about 12,500 feet; thence and from said point on said international line east along the said international line 6,750 feet to a monument on the said international line marking the same, situated west of the San Pedro river; thence east along the said international line 680 feet to the said San Pedro river; thence east along the said international line about 27,470 feet to a point on the said international line where the said international line intersects the east

side line of the San Pedro grant; from the southeast corner monument of the said San Pedro grant the high peak of the Huachuca mountains bears north 57 degrees 50' west; thence and from said last-named point on the international boundary line north about 7 degrees east about 30,500 feet to the northeast corner monument of the said San Pedro grant and the place of beginning. The portion of the said grant hereinabove described and situated within the United States of America contains thirty-eight thousand six hundred and twenty-two and six-hundredths (38,622.6) acres.

VI.

That your petitioner holds the fee and possession of the said described tract of land by virtue of certain instruments of writing, the first of which is known generally and is hereinafter designated as the grant title, and the others being various mesne conveyances from Rafael Elias, the owner of the said original grant title, and his successors in possession and title.

V.

That the said instrument in writing, called, as aforesaid, the grant title, bears date the 8th day of May, 1833, and was duly made, executed, and delivered by Jose Maria Mendoza, the treasurer general

of the free and sovereign State of Sonora, Republic of Mexico, in the name of the sovereignty of the said State of Sonora, under and by virtue of article XI of the general sovereign decree numbered 70, which was passed on the 4th day of August, 1824, by the sovereign constituent congress of the United States of Mexico, which article concedes to the States of the Republic of Mexico the rents or revenues which by said law are not reserved to the general government, one of which revenues is the vacant lands within the States of the Republic, thereby confirming to the States the lands hereinabove described.

By a law passed May 20th, 1825, numbered 30, and other decrees subsequent thereto, the constituent congress of the State of Sonora and Sinaloa prescribed regulations for the sale of these lands of the said States of the Republic of Mexico.

17

VI.

In accordance with and under and by virtue of these said laws and decrees such proceedings were regularly and lawfully had in the matter of this tract of land that the said treasurer of the State of Sonora, as was prescribed by law, and in the name of the sovereignty of the said State, did duly and regularly sell and convey in fee and possession to Rafael Elias the land hereinbefore described and known as the San Pedro grant, for the sum of one hundred — ninety dollars (\$190) and other good and valuable considerations, as is more fully set forth in the said grant title.

VII.

That the initiatory proceedings in the steps taken to obtain this grant title to the said described land was a petition dated in the year 1820 or 1821, addressed to the governor intendente, who was then and there the officer of the Spanish government in charge of and having exclusive jurisdiction in the matter of the sales of public lands in the precinct of Fronteras, in which precinct the lands petitioned for were situated; the said petition was made and signed by Jose Jesus Perez; that thereafter proceedings of survey, appraisement, information of competency, and publication were taken on this petition as required by the instructions and laws of the royal ordinances of the intendente of December 4th, 1786, and that thereafter and on the 5th day of July, 1822, at the city of Arispe, in the said State of Sonora, the tract of land petitioned for and hereinabove described was sold by the proper officers of the Republic of Mexico to Don Jose Jesus Perez for the said sum of one hundred — ninety dollars (\$190).

That on July 6th, 1822, the honorable intendente *ad interim* of the province of Sonora and Sinaloa, Minister and Treasurer d. Ygnacio de Bustamente y Velasco, on submission to him of the foregoing proceedings, made order that the said Jose Jesus Perez pay into the treasury the sum of two hundred and eight dollars and one cent (\$208.01), being the said one hundred and ninety dollars (\$190), 17½ costs and charges, and that report be made of the same to the superior board of the treasury for its approbation or determination.

That the said sale was on July 7th, 1822, by the board of the provincial imperial treasury sitting at the said city of Arispe, legally, publicly, and solemnly approved and referred to the superior board of the treasury for its approval or determination; that thereafter and within the proper time and to the proper officer the said sum of one hundred and ninety dollars (\$190), together with the other costs and charges incident thereto, was paid into the national treasury of the Republic of Mexico.

VIII.

That before the said superior board of the treasury could approve the said sale the said board was abolished and no further proceedings were taken in the matter of the sale until October 25th, 1832, when proceedings were instituted to transfer the rights and title of the said Jose Jesus Perez to Rafael Elias and to have the formal title to the said lands issued to the said Rafael Elias, and in accordance therewith, on the 8th day of May, 1833, Jose Maria Mendoza, the treasurer general of the State of Sonora, issued to the said Rafael Elias the final testimonio or evidence of title of said San Pedro grant, and the same was thereupon duly recorded in the proper records of the said State of Sonora.

IX.

That the map hereto attached and made a part of this petition as Exhibit "A" was made by one H. G. Howe from the calls of the grant-title papers and from observations taken by the said H. G. Howe from the original monuments marking the corners of the said grant to prominent mountain peaks in the vicinity and to monuments of the international boundary line between the United States of America and the Republic of Mexico; that owing to the death of the said H. G. Howe before he could complete and perfect the survey of the said grant and file an amended map thereto one Philip

18 Contzen made an amended map, which is attached to this amended petition and marked Exhibit "A" (see Plaintiff's Exhibit 28), from the calls of the grant-title papers and from observations and measurements taken by the said Philip Contzen from the original monuments marking the central monument of the said grant and marking the corners of the said grant to prominent mountain peaks in the vicinity, which said last map shows as nearly as may be the location of each of the monuments of said grant and of the boundaries of the said grant and of the number of acres of the said grant.

X.

That the original copy of the grant, title, or instrument of writing by which the said grant was conveyed to the aforesaid grantee is not in the possession of or under the control of your petitioner, and your petitioner has been unable to with certainty and definiteness ascertain its whereabouts. Your petitioner is informed, however, and believes and therefore alleges, that the said original copy of the grant title is in the hands of one of the owners of that part of the San

Pedro grant which lies in the Republic of Mexico, for which reason the said original copy of the document setting forth the title of the said San Pedro grant cannot be herewith presented or delivered, but your petitioner herewith presents and files two copies of the said document in the Spanish language, together with two copies of the translation thereof, as required by the rules of this honorable court.

That under the provisions of an act of Congress approved July 22, 1854, entitled "An act to establish the offices of surveyor general of New Mexico, Kansas, and Nebraska to grant donations to actual settlers therein," and for other purposes, and under acts amendatory or in extension thereof or supplemental thereto, certain of the grantors of your petitioner filed their petitions for a survey of the said San Pedro grant in the office of the U. S. surveyor general for the Territory of Arizona; that there is also in said office filed and of record a report made by Professor R. C. Hopkins, a duly and regularly authorized agent of the United States of America in land-grant matters, according to which said report of the said Professor Hopkins the expediente of this said land grant, contain-

19 ing fifty (50) pages, was found in the proper places, in the proper archives, and on the proper paper, and that all the proceedings of survey, valuation, and sale were regular, the handwriting and signatures were genuine; that the certificate showing the payment of the amount at which the land had been valued and the record of the transfer between the said Perez and the said Rafael Elias and the issuance of the formal title to the said Rafael Elias were all found properly recorded in proper form, in the proper places, among the archives of the said State of Sonora, in the said Republic of Mexico. And your petitioner further represents that the report of the said agent, Hopkins, fully established the genuine character of the original title papers of the said grant, and that the statements in the said report of the said Hopkins are true, and that said grant is and at the time of the execution of the treaty known as the Gadsden treaty was located and duly recorded in the archives of Mexico; that there is also on file and of record in the office of the surveyor general of the said Territory of Arizona a report to the said surveyor general of one G. C. Wharton, apparently acting special under the instructions of the honorable Commissioner of the General Land Office, in which the said Wharton reports against the said grant title, and further reports that, in his opinion, the land described in the said grant title is situated in the State of Sonora, Republic of Mexico, but your petitioner affirms that the said report is not made with a knowledge of the full facts of the matters pertaining to this land-grant claim, or, if made with a knowledge of the full facts, is not worthy of consideration, because not sustained or upheld by the facts, as appears more fully from the said report and the maps thereto attached.

That there is also on file in the office of the said surveyor general a report of one Thomas Borton, apparently acting special under the instructions of the said surveyor general, but your petitioner is unable to determine from the said report whether it approves or disapproves of the said land-grant claim.

That beyond the matters and things referred to in this numbered paragraph this said San Pedro Grant claim has not been
20 considered or acted upon by Congress, the surveyor general of the Territory of Arizona, or any other authority of the United States of America constituted by law for the adjustment of land titles within the limits of the Territory of Arizona as far as the records of the surveyor general's office show or as far as your petitioner has been able to ascertain from any records or any information obtainable within the United States of America.

XI.

That the original grantees of this said grant and their successors in interest up to the time of the Gadsden treaty were Mexicans and citizens of the Republic of Mexico.

XII.

That all the steps and proceedings in the matter of the petition, survey, appraisalment, offers, auction, and sale of said grant and the payment therefor were regular, complete, and lawful, and vested a perfect and valid title in fee thereto in the said grantees of said grant; that the said grantees at the time went into actual possession, use, and occupation of said grant, and erected proper monuments, and that the said grantees and their descendants and regular representatives have continued ever since until the present time in the actual possession, use, and occupation of the same, and are now seized and possessed in fee thereof; that said grant document is a complete definite grant in fee, by way of sale, coupled with the conditions subsequent not to abandon the same for a longer period than three years without good reason, which abandonment would subject the tract to adjudication to any third parties who might apply for or denounce the same; that no part of said grant was ever claimed, and that your petitioner is entitled to the confirmation of so much of said grant as lies in the Territory of Arizona in accordance with the metes and bounds set forth in the original survey and grant of the same, which metes and bounds, your petitioner avers, are correctly represented by the amended map of said grant hereto attached.

21 Your petitioner further alleges that the lands claimed by it are all the lands embraced within the original survey of said grant lying within the Territory of Arizona and the boundaries established and described therein, and that the said lands are the lands embraced within the accompanying amended map of said grant filed herewith. Your petitioner further avers on information and belief that there is no person in possession of any part of the said grant otherwise than by lease or permission of your petitioner.

XIII.

That your petitioner is ready to furnish at such times and upon such terms as this honorable court may direct such original papers as your petitioner has or can obtain to show the transfer of the title

of the original grantees in this grant title to your petitioner, and where the original papers cannot be produced your petitioner is ready to furnish at the direction of this court certified copies of all or any papers evidencing your petitioner's claim to the land embraced within this grant title.

Wherefore your petitioner prays that the validity of the said grant title may be inquired into and decided, and that the title of your petitioner to said lands be declared valid, and your petitioner prays for such other and further relief as to this honorable court may seem meet and proper in the premises.

FRANK H. HEREFORD,
Attorney for Petitioner & Agent for the
Reloj Cattle Co.

(Endorsements:) Case No. 10. In U. S. court of private land claims. The Reloj Cattle Company vs. United States of America. Amended petition. Filed in the office of the clerk, court of private land claims, May 13, 1899. Jas. H. Reeder, clerk, by R. L. Long, deputy.

22 And be it further remembered that thereafter, to wit, on June 1, 1899, an answer was filed by Matt G. Reynolds, Esq., attorney for the United States; which said answer is in the following words and figures, to wit:

THE RELOJ CATTLE COMPANY	}
<i>versus</i>	
THE UNITED STATES OF AMERICA and E. J. ROBERTS, Defendants.	{

Now comes The United States, defendant in the above-entitled cause, and for answer to the petition and amended petition filed in said cause shows to the court as follows:

That it is not true, as alleged in said petition, that said plaintiff is the owner in fee and in possession of that certain tract of land lying, being, and situate in the county of Cochise, Territory of Arizona, known and called the San Pedro land grant or private land claim, and more particularly described in paragraph three of plaintiff's amended petition; nor is it true that said plaintiff holds the fee and possession of said described tract by virtue of regular deraignment of interest from the original grantee or in any other way.

Defendant, further answering, denies that the surveys and maps made by one H. G. Howe and one Philip Contzen, referred to in paragraph nine of plaintiff's petition, correctly locate the tract of land as described in the alleged grant titles set up and described in plaintiff's said petition, but shows to the court that on the contrary said tract, whether located according to the quantity or the courses and distances or the natural objects mentioned in said alleged title, lies entirely south of the boundary line between the Republics of the United States and Mexico, and is thus without the jurisdiction of this court.

As to all other matters alleged in plaintiff's petition and undenied petition defendant is without knowledge or information, and accordingly denies each and every allegation relating thereto, and prays that the plaintiff be put to strict proof of the truth thereof.

23 Further answering this defendant, The United States, denies that the claim set forth and described in plaintiff's petition or any part thereof constituted or was at the date of the treaty a complete and perfect title, and alleges that by reason of claimant's failure to file said claim within two years from March 3rd, 1891, said claimant abandoned their said claim and became forever barred from asserting the same, and defendant pleads said limitation of two years prescribed by the act establishing this court in bar of this proceeding.

Further answering, this defendant shows that under and pursuant to proceedings of denouncement initiated in July 8, 1880, by the predecessors in title of claimant in this cause, the government of Mexico measured off and delineated to said denouncers the legal area or cabida legal of the four sitios mentioned in claimant's title papers, and in the same proceeding it was adjudicated that the ranch of San Pedro has no known boundary or boundaries, and thus no surplus or demasias. Defendant shows that said four sitios so measured off and delineated to said denouncers was and is located entirely without the Republic of the United States and within the Republic of Mexico, and that the claim herein sued for was thus entirely satisfied and discharged by the location of said four sitios within the Republic of Mexico.

Wherefore defendant prays that said petition be dismissed and said claim rejected.

MATT G. REYNOLDS,

U. S. Attorney.

(Endorsed:) Cause No. 10, Court of private land claims, Holey Cattle Co. vs. United States. Answer, Filed June 1, 1899, James H. Bender, clerk, by H. L. Long, dep.

24 [Endorsed:] U. S. No. 10, P. G. Court -- private land claims, The Holey Cattle Co. vs. United States et al. Answer, Filed in the office of the clerk, court of private land claims, June 1, 1899, Jas. H. Bender, clerk, by H. L. Long, deputy. Matt G. Reynolds, U. S. attorney.

25 And be it further remembered that afterwards, to wit, on the first day of June, A. D. 1899, at Tucson, in the Territory of Arizona, the same being the 46th day of the January term, 1899, the hearing of said cause was commenced and on the following day was concluded.

Frank H. Herford, Esquire, appeared for the plaintiff and W. H. Pope, Esquire, appeared for the defendant The United States.

Upon the trial of the cause the following testimony, both oral and documentary, was offered and introduced:

26 In the United States Court of Private Land Claims, January Term, A. D. 1881, Tucson, Arizona.

The Relaj Cattle Company, Plaintiff,

The United States of America and E. J. Roberts, } No. 10.
Defendants.

Appearances: Mr. Frank H. Hereford appeared for the plaintiff. Mr. Matt. G. Reynolds, U. S. attorney, and Mr. William H. Pope, assistant U. S. attorney, appeared for the Government.

On June 1st, 1899, the above-entitled case came up for hearing, and the following proceedings were had therein in open court:

MR. HEREFORD: I desire to offer in evidence a copy of the articles of incorporation of the Relaj Cattle Company (Plaintiff's Exhibit No. 1).

Also offer in evidence copy of the original expediente of the San Pedro grant, which was filed in the San Rafael del Valle case (Plaintiff's Exhibit No. 2).

Objection as immaterial, irrelevant, and incompetent and as being manifestly an incomplete copy thereof.

We also offer in evidence two copies of the translation of the expediente (Plaintiff's Exhibit No. 3).

Also offer in evidence the deposition of Lela Elias, filed in the Agua Prieta case, showing the family tree of the Elias family (Plaintiff's Exhibit No. 4).

It goes in under the same conditions which it went in the Agua Prieta case.

27 Also offer in evidence a certified copy of a deed from Santa Juana Ayusa, administrator of the estate of Jose Juan Elias, to James Hall (Plaintiff's Exhibit No. 5).

Also copy of deed from heirs confirming same of the same (Plaintiff's Exhibit No. 6).

Also offer in evidence certified copy of order of sale of real estate in the matter of the estate of Jose Juan Elias (Plaintiff's Exhibit No. 7).

Also order confirming the same (Plaintiff's Exhibit No. 8).

Also offer in evidence a certified copy of the order of confirmation of sale of real estate of the estate of Jose Juan Elias (Plaintiff's Exhibit No. 9).

Also copies of the same (Plaintiff's Exhibit No. 10).

Also offer in evidence a deed from Jose Maria Elias et al. to James M. Hall (Plaintiff's Exhibit No. 11).

Also copies of the same (Plaintiff's Exhibit No. 12).

Also offer in evidence a deed from James M. Hall to John M. Aston (Plaintiff's Exhibit No. 13).

Also copies of the same (Plaintiff's Exhibit No. 14).

Also offer in evidence a deed from James M. Hall and J. M. Aston to L. E. Gray (Plaintiff's Exhibit No. 15).

Also copies of the same (Plaintiff's Exhibit No. 16).

Also offer in evidence a deed from J. M. Aston et al. to Relaj

Cattle Company, dated October 13th, 1885 (Plaintiff's Exhibit No. 17).

Also copies of the same (Plaintiff's Exhibit No. 18).

George J. Roskrug, sworn on the part of the plaintiffs, testified, upon direct examination by Mr. Herford, as follows:

Q. What is your name?

A. George J. Roskrug.

Q. What is your business?

A. Surveyor.

28 Q. How long have you been a surveyor?

A. 27 years.

Q. Have you ever held any position of trust or responsibility in this Territory?

A. I have been 4 terms county surveyor of Pima county, several terms as city engineer of the city of Tucson, 6 years chief draughtsman in the surveyor general's office, 3½ years as chief clerk of the surveyor general, and a year and a half surveyor general.

Q. Did you ever make a survey of what is known as the San Rafael del Valle grant?

A. Yes, sir.

Q. About when did you make a survey?

A. In May and June, 1891.

Q. Where is the land measured in that survey situated?

A. In the valley of the San Pedro and Cochise county in this Territory between the Mule and Huachuca mountains.

Q. How far north of the international boundary line, more or less, is the southern line of the San Rafael del Valle land grant situated?

A. About four or five miles.

Q. Do you know how near to the international boundary line the southern extremity of the Mule mountains extend?

A. They come within about 4 miles of the Mexico boundary line, the south end of the Mule mountains.

Q. About how near to the international boundary line does the southern end of the Huachuca mountains extend?

A. The main range of the Huachuclas are in Arizona, and, I think, the foot-hills run off probably, maybe, a mile south of the line.

Q. Did you ever, in making a survey of the San Rafael del Valle grant, locate a hill known as Limey hill?

A. Yes, sir.

Q. I will ask you to examine that photograph and see if you can tell me what it is.

A. Yes, sir; that is Limey hill, which marks the north center of the San Pedro land grant and also the center of the Boquillas.

Q. Who took that photograph?

29 A. I took that photograph, marked Exhibit No. 1, Limey Hill, introduced in San Rafael del Valle land grant, showing top of monument in this case (Plaintiff's Exhibit No. 19).

Q. And you ever had any monument which you used for the purpose of locating the southern line of the San Rafael del Valley land grant?

A. Yes, sir; I found a monument on the left bank of the Bachata cañon.

Q. Where is the San Pedro river with respect to that monument?

A. To the west.

Q. About how far west?

A. About $2\frac{1}{2}$ miles.

Q. When you found this monument what, if any papers, did you take to guide you in looking for it?

A. I had a certified copy of the expediente of the San Pedro private land claim.

Q. Was it with the aid of that paper that you located this monument?

A. Yes, sir.

Q. What corner of the San Pedro land grant, if any, did you locate this monument as?

A. The northeast corner.

Q. Drawing a line directly west from that monument across the San Pedro river, about how far north would this Liney hill that you spoke of be?

A. More or less directly west from the monument it would be about $18\frac{1}{2}$ miles.

Q. Referring again to that monument which you say is the northeast corner of the San Pedro grant, did you ever take a photograph of it?

A. I believe I did; there was a big rattlesnake at that time about 5 feet long; I know I photographed the snake, because it was right in the path.

Q. Describe the monument as well as you can, about its size and general appearance.

A. My notes say that the monument of the northeast corner of the San Pedro land grant is on the bank of the Cañada de la Bachata, 5 feet square base, and is thrown down, but can easily be seen, and it was one time a square-built monument.

Q. What was its appearance as to age?

A. It looked like an old monument.

Q. What kind of a cañada is that Bachata cañada?

A. It is a long cañada that comes from the Mule mountains for probably ten or 12 miles and empties into the San Pedro river.

Q. Do you know any reason why that should be called the Bachata cañada?

A. I believe that bachata is a little plant that grew in the cañada, with some berries on it, and from that it has derived its name.

Q. How was that with respect to the character of the plant; was there much or little of it?

A. O, I could not tell; I could not tell; I was taken there by Mexicans and they told me that it was Bachata cañada.

Q. Who were they?

A. Concepcion Elias and a man named Gonzales.

Q. Do you know whether they were old residents there or not?

A. They lived in San Pedro, Mexico.

Q. Were they young or old men?

A. They said they had lived there when they were boys.

Objection to all this testimony as to what they told you.

Q. What is the general direction of the San Pedro river?

A. Directly west from that northeast corner monument of the San Pedro grant, the San Pedro river runs north.

Q. Do you know now where the San Pedro grant is located?

A. Mr. Elias had leased a lot of land this side of the line and Mrs. Elias told me the north line of the San Pedro was above Hereford.

Objection to this answer and move to strike it out on the ground that it is hearsay and not the best evidence, and on the ground that it is immaterial, irrelevant, and incompetent.

31 Cross-examination by Mr. POPE:

Q. You say you had the expediente of the San Pedro grant with you at the time you made this reconnoissance of the San Rafael del Valle grant?

A. Certified copy; yes, sir.

Q. You located these objects then with respect to that expediente, did you not?

A. Yes, sir.

Q. Now, how did you ascertain where the San Pedro grant or anything about where this was—did you locate any other monument of the San Pedro grant?

A. Yes, sir.

Q. Which one did you locate?

A. I located the—when I started I ran the line from the center.

Q. Where did you locate the center?

A. I located the center at the monument in the center of the San Pedro valley.

Q. Did you take a photograph of that monument?

A. I have the photograph of the San Rafael del Valle case; yes, sir; that is the monument that I took at the center of the grant.

Q. That is the monument which you testified about on your former trial of the San Rafael del Valle case, is it?

A. Yes, sir.

Q. How far was that monument from the international boundary line?

A. About $\frac{1}{2}$ a mile north.

Q. The northeast corner of the San Pedro grant was based upon the supposition that this was the center monument of the San Pedro grant?

A. Yes, sir; I started from there, but I went from point to point, but could not come out either in course or measurement with the calls in the expediente, but come out on this monument on Bachata cañada.

32 Q. By not following the courses and distances in the expediente you located the northeast corner?

A. I found that the distances and courses were out. By going towards the northeast corner, at the mouth of the Bachata cañada, I found this monument of the northeast corner of the San Pedro grant.

Q. Did you say that you had the expediente?

A. I did not. I said that I had a certified copy of the expediente with me; a certified copy that I got from the surveyor general's office.

Q. These are the notes of the survey?

A. Yes, sir.

Q. Are these all the notes of the survey that you had then?

A. Yes, sir; that is all.

Q. Did you say your investigations at that time was based on what was contained in these?

A. Most of it; yes, sir; that is the only certified copy that I had which I got from the surveyor general's office. I started from the center monument and ran towards the northeast corner, and from there along the southwest and kept going southwest. Most of these monuments are corner monuments; that is what the expediente calls them.

Q. You are not acquainted with the Spanish?

A. No, sir.

Q. You do not talk Spanish?

A. No, sir.

Q. Is there any monument in that expediente at all that is called the center monument?

A. No, sir.

Q. This is the corner monument and no mention of a center monument in it?

A. No, sir.

Q. And you assumed that this was the center monument because you could not find the natural objects?

A. I naturally presumed that that was the center monument, because there was the monument selected by these witnesses, and they told me that they had known the monument from the
33 time they were boys.

Q. That was Concepcion Elias?

A. Yes, sir; one of them.

Q. They did not say there was a center monument?

A. They told me it was an old monument that had been built ten years before the international boundary line had been run.

Q. They did not state that was the center monument?

A. No, sir; but it was built ten years before the international boundary line was built.

Q. If you testified differently on your former examination, which testimony is correct?

A. I am testifying the same as on my former examination; I am testifying from recollection what I believe I testified before.

Q. Your testimony was at that time clearer on that subject?

A. Yes, sir.

Q. You selected this center monument where there was no center monument named in the paper that you had, because you could not find these natural objects?

A. Wherever the various courses and distances required it.

Q. Was that copy in Spanish?

A. That was in English.

Q. Where did you get it?

A. Colonel Herring furnished it.

Q. Did you retrace the whole of the San Pedro grant; did you go down into Mexico?

A. I went on the line southeast to the west point of the Mule mountains; that is one of the places named in the expediente.

Q. And your investigation was based on this center monument and from the fact that in running to the northeast corner there was a bachata cañada called for as being at the west end of the Mule mountains.

A. There was at the west end of the Mule mountains a bachata that answers the description.

34 Q. Now, I believe you said this center monument was about a mile inside of the United States?

A. Yes, sir.

Q. And your presumption of the survey is based largely on the fact that your theory was that the San Pedro grant was in the United States?

A. Yes, sir.

Q. In fact, the principal foundation of this San Pedro grant is the fact that you located the center monument of this grant in the United States and the San Pedro grant was mainly based upon that?

A. Yes, sir.

Q. That was the initial monument of the San Pedro grant?

A. Yes, sir.

Q. The northeast corner was at the Bachata cañada?

A. Yes, sir.

Q. This other witness is still alive, is he?

A. I could not tell; he lived at San Pedro.

Q. Concepcion Elias is alive?

A. Yes, sir; he is here in this court-room at this time. I would like to make this statement about this monument: That I used my utmost endeavor to locate this grant, as it was originally located by the Mexican government, and I am perfectly satisfied in my mind that that is the initial monument and that the northeast corner is at the Bachata cañada.

Q. Your investigation was based on this expediente that was furnished you?

A. Yes, sir; on the assumption that that was the center monument.

Redirect examination by Mr. HEREFORD :

Q. Have you had an opportunity of comparing that with other copies of the translation of the expediente since?

A. Yes, sir.

Q. Have you found that to be incorrect?

A. Yes, sir.

Q. Then you had, in seeking for the calls of the San Pedro grant at that time, to depend upon an incorrect copy of the expediente to find it, did you not?

A. Yes, sir.

35 Q. Generally speaking, the line which you ran from the center monument to the northeast corner monument of the San Pedro grant was a crooked line?

A. Yes, sir.

Q. Very irregular?

A. Yes, sir.

Q. Examine that photograph; do you recognize that?

A. Yes, sir.

Q. Who took it?

A. I did.

Q. Where is that monument in that photograph situated with respect to the one which you took to be the center monument?

A. That monument was about, I should say, a mile and a half north of the monument which I took for the center monument on the plain towards the Huachuca mountains.

Q. This, I believe, is practically the same?

A. Practically the same; yes, sir; that is another photograph of it.

Q. What is the size of that monument and description of it?

A. That monument is a very large monument; it was one of the largest monuments that I have ever seen.

Q. What is that photograph?

A. That is a photograph, I think, of the same monument.

We offer in evidence this photograph of the initial monument of the San Pedro grant; also showing Antonio Gonzales and Concepcion Elias (Plaintiff's Exhibit No. 20).

Also offer in evidence this photograph, being a photograph of the monument located a mile and a half north of the monument taken as the center monument by Mr. Roskrue (Plaintiff's Exhibit No. 21).

Also offer in evidence this photograph of the same monument taken from a different point (Plaintiff's Exhibit No. 22).

Also offer this photograph in evidence of the same monument taken from a different point (Plaintiff's Exhibit No. 23).

36 Q. On which side of the San Pedro river are these two monuments that you have testified to, the one you testified to as being the center monument and the other one about a mile and a half north of the center monument?

A. Both on the west side.

Recross-examination by Mr. POPE :

Q. In what direction is this monument of which these are three photographs from the other one that you took as the center monument?

A. About due north ; a little west of north ; very nearly north.

PHILIP CONTZEN, sworn on the part of the plaintiff, testified, upon direct examination by Mr. Hereford, as follows :

Q. What is your business ?

A. Engineer, surveyor, draughtsman.

Q. How long have you been in that business ?

A. About 9 years.

Q. Do you occupy any position of trust or responsibility in the government of this city ?

A. I do.

Q. State what that is.

A. I am county surveyor of this county and U. S. deputy land and mineral surveyor.

Q. Did you ever survey any land in which is known as the San Pedro land grant ?

A. I did ; recently.

Q. About how long ago ?

A. About three weeks ago or less.

Q. In making that survey what did you have to guide you ?

A. Before I went down there I went to the surveyor general's office and looked over the description of the San Pedro land grant and found the same was located between the Mule mountains and also the Huachuca mountains running in the San Pedro valley ; from Howe's county map that line is marked at a distance of about five miles north of the international boundary line, and with that data I proceeded down there under your instructions.

37 Q. Did you have any copy of the expediente in surveying the San Pedro grant ?

A. I did.

Q. Do you have any knowledge of the Spanish language ?

A. To a certain extent I have.

Q. Are you able to read or write it ?

A. Well, fairly well.

Q. State what you did.

A. Well, after I obtained some data I went in company with Mr. Cobb down to Fairbanks, and from there we went down to a place called Palominas, or Ochoaville, where Mr. Ashton resides ; I had a talk with him in reference to the landmarks of the San Pedro grant, and he told me about the various monuments, the principal monument being situated about $2\frac{1}{2}$ miles west of the ranch, and also about a monument being located at a place more or less $2\frac{1}{2}$ miles east of Packard's ranch toward the Bachata cañada ; after I had talked over a little bit the survey with him and myself and he kept reading the expediente, and all indications led that that was the center monument, being $2\frac{1}{2}$ miles west of Palominas or Ashton's ranch.

Q. Look at these four photographs and see if you can tell what any one of them represents.

A. These three, 21, 22, and 23, represents the monument.

Q. Represents the monument you went to?

A. Yes, sir.

Q. And, as I understand you, that is the monument you took to be the center monument?

A. Yes, sir.

Q. Will you state generally why you took that to be the center monument of that grant?

A. For this reason: By looking over the expediente and reading over the different calls, and I took the center-monument theory on which most of the surveys in Sonora were executed in old times; at once I could see by following a line towards the northeast and towards the southwest and towards the southeast I would come to certain objects mentioned in the expediente; on the northeast, the Cañada de la Bachata; southwest, a forest of oak trees; southeast, a peak of the San Jose mountains; these principal points are given in the expediente.

Q. Standing on the center monument, what could you see in a northeast direction?

A. Northeast more or less that place where the Bachata cañada is.

Q. Could you at that distance tell what it was?

A. No, sir; not very well; except more or less I can distinguish there was a kind of a plant there or brush that we used to see in this cañada.

Q. On the southeast what could you see?

A. A peak.

Q. And the southwest what could you see?

A. That oak forest that is mentioned.

Q. Now, go right ahead and describe what you did in locating this grant after choosing that center monument.

A. In the first place I rode over the ground towards the south; first I went to see the southeast line; I drove Mr. Cobb over the line and came to an old monument on the east bank of the San Pedro river, and we followed along until we came to a peak, and after searching a little we found another old monument there.

Q. Just generally state.

A. We could not find anything especially in reference to monuments because we merely drove over the ground.

Q. Did you afterwards make a survey of that land, and a map?

A. I did; under the center-monument theory; that is a blue print of the map I made.

Q. Was a copy of this survey placed in my hands?

A. Yes, sir.

Q. Describe to the court the way in which you surveyed it.

A. I went out from the center monument—

Q. Just explain what you found on this survey and the distances and general appearance of the monuments and courses as found here; read the description to the court.

A. On the same day, month, and year, being on the spot and the

interested parties having agreed in the presence of the fiscal agent and other officers, I ordered the erection of a corner monument and square.

Q. What did you assume that to be?

A. I assumed that to be the center monument, marked on this map center monument; then taking the direction from the southwest to the northwest, going to the Bachata cañada to the northeast, I could not follow that course as it was given here; I just went northeast; I took that to be from the southwest to the northeast; I followed out that course, and at a distance of 4 miles and a half I came to a stone monument right close to the river; that stone monument is about ten feet long and about a foot high; that is about $\frac{1}{2}$ mile from the river; while I was doing this I met a man named Prate on the east bank of the river, who said the monument was destroyed, and he also said to me—

Q. Just read the next.

A. "50 cords, the last one ending, going from the houses down the river on the banks of the ford at the falls, where I ordered put a cross monument;" that is at this place about $2\frac{1}{2}$ miles; that place of the ford is at this point, very close to the monument, and also rapids which are mentioned in this expediente; however, the ford has changed between Cottonwood, what is marked on this map, and between the old point where the monument stood at one time; I mean the ford has changed, made the banks higher, has cut down considerable, and the people have taken other places to cross more convenient.

40 Q. What was the general appearance of the banks; can you see where wagons has crossed at different times at different points?

A. Yes, sir. From there I proceeded to count 50 cords, the last ending in a valley itself near a hillock distant 3 cords; when I came to this last monument I came to a pile of scattered rocks about 20 feet long, right close to the little valley, and in fact almost in the San Pedro valley, close to a hillock; in fact there are two hillocks on both sides of them, and from there we measured 50 cords, ending in front of the Huachuca mountains, where I put a cross on a rocky hill. I found that rock hill or rocky knoll about 60 feet in diameter and about 20 feet high, very small pile of rocks there; from there we measured 50 cords to a table-land; about a mile from that last point I came to the last monument, about probably 5 feet base and 2 feet high, right at the edge of the brushy table-land; from there I continued and about a mile I came to this monument on the bank of the Cañada de la Bachata, which is known in that section as such; this monument is about 6 feet base and 2 feet high; from there I went to the center monument and ran southwesterly; in order to follow the expediente I followed this line first; I went from the center monument and ran the southeast course, following the description here to this hill; from that point and from there followed from the northwest to the southeast there were measured and counted 50 cords and ended in the valley of the San Pedro river, where I found a monument 6 feet base and

about 6 inches high; I then counted 50 cords after passing the river at the foot of a hill; I translate that at the edge of a hillock; at that point I found a stone monument; that is an old monument probably 12 feet diameter and 4 feet high, very old, supposed to be an old boundary monument; from the last point where we measured 50 cords and ended in the dry
 41 creek of Las Barras, and there I found a monument $\frac{3}{4}$ of a foot high and I came to the arroyo. There is more or less switches there; there is a good deal of switches there, but I did not find any monument. Then I continued from that point, measured and counted 50 cords, the last ending in a black mound, where I ordered put a cross monument; that is this point here, at about a mile and $\frac{3}{4}$ from the arroyo that I mentioned and is shown here on this map. There is a little monument, about 6 feet in diameter and 6 inches high, well defined; that one is situated on a little dark limestone knoll; and then counted and measured 50 cords, which ended at the descent of the picacho. I came at about a mile and a half from that last point mentioned. I came to a peak, where I found this old monument which is shown on this map; it is 8 feet in diameter and 3 feet high. Then I went to the center again, and, reading from the expediente, from there I measured 50 cords, the last ending in a thick forest, where I put a cross monument; that is this point here. I found a small monument there; that is this point here marked Oak Forest, which practically corresponds to the description given in the expediente. From there I measured and counted 50 cords, the last ending in a dry creek of Del Malpais; that is this arroyo here shown on the map. It is from bank to bank 400 feet and has all the evidences of an arroyo Del Malpais. From this point I measured and counted 50 cords, the last ending at the ascending slope of a red table-land, but could find no monument there. From the last point there were measured and counted 50 cords, which terminates on the same table-land. This point I found a small monument, which is 4 foot base and $\frac{1}{2}$ foot high.

Q. Now, come back to this point—the center monument.
 42 Will you describe that center monument as to its size and general appearance and age?

A. That monument appears to be an old monument of 16 foot base and 3 feet high; it stands about in the middle of the San Pedro valley more or less out on the base of the Huachuclas and on the western edge of the San Pedro valley proper.

Q. This is marked 16 feet base and 3 feet high; is that correct?

A. Yes, sir.

Q. What is the latitude and longitude?

A. Latitude 31 degrees 21' north; longitude 110 degrees 9' west.

Q. Following this northeast line which you took, just describe generally the country embraced within the calls of the expediente.

A. It is comparatively level country, slightly sloping towards the river; smooth, level country.

Q. What kind of a monument did you find at the northwest corner?

A. That monument I discovered is 10 feet base and 1 foot high.

Q. The next call is from that center monument 50 cords and ending in a valley; what did you find there?

A. I found a little hillock in the valley and some scattered stones; there has been an old monument there; there is a wash right close; it would be called a wash.

Q. Is it in the valley or partially in that wash?

A. It is on the side of the wash; right in the edge of the San Pedro valley; right on the very edge; the last 50 cords ended in front of the Huachuca mountains, where I ordered put a cross monument.

Q. What is the distance of 50 cords?

A. It is about a mile and $\frac{3}{10}$.

Q. Now take the fourth call, the last 50 cords ended on a black table-lands; describe that.

A. It is a common table-land, covered with black brush, small brush.

43 Q. Did you find a monument there?

A. Yes, sir; a small one.

Q. The next call is at the Bachata cañada; what have you there?

A. A monument 6 feet base and 2 feet high.

Q. What is the general appearance of that monument?

A. It appears to be an old monument.

Q. How about the Bachata cañada?

A. There is a good deal of this black brush there the Mexicans call bachata that grows sometimes as high as 6 feet, but small leaves and black berries.

Q. You have been all over that country; is there any other place there you would denominate Cañada Bachata?

A. I think not; no, sir.

Q. Now, return to the center; the first call ended in the middle of the valley of the San Pedro, where was ordered a cross monument; how is that with respect to its being in the middle of the valley?

A. That is about right, in the middle of the valley.

Q. The call corresponds to the call in the expediente?

A. Yes, sir.

Q. The second call ended after passing the river at the foot of a hill; how many miles is that monument from the center of the valley?

A. It is about a mile.

Q. Reading on, towards the southeast did you find any monument there?

A. Yes, sir; I found a small stone monument right on the edge a little south of the other.

Q. What is the old stone monument, if you know?

A. I heard from Mr. Roskrige that it was an old monument, and was placed there by the government.

Q. Do you know what arroyo del las barras means?

A. Yes, sir; as far as my knowledge extends, it means switches.

Q. The next call ended in dry creek; did you find any
44 dry creek which would correspond to that?

A. Yes, sir; there was a great deal of a growth of brush, but I found no monument; there were indications, but I could not make out what it was; it was very rocky.

Q. And from there the next 50 cords ended in a black mound; about how far was that from the southeast corner?

A. A mile and $\frac{3}{4}$.

Q. Did you find any monument there?

A. Yes, sir; I found a small monument there.

Q. How about the description of that black mound?

A. That corresponds with the expediente; it is a dark limestone knoll; it has a dark brush undergrowth of timber.

Q. How does that correspond with the expediente?

A. It corresponds well.

Q. The fifth call ended at the descent of the picacho; did you find a monument there?

A. Yes, sir; 8 feet base, 2 feet high; and near it is marked the slope of the peak.

Q. Describe that picacho itself.

A. That picacho, I should judge, is about a hundred feet above the general level of the country and probably a $\frac{1}{4}$ of a mile long, east and west; the monument is situated on the northwest slope of the peak, about 200 feet from the junction of two gulches, and lies on that mountain.

Q. What is its appearance?

A. It is 8 feet base, 2 feet high; very old monument.

Q. Now, return again to the center monument, and, going towards the southwest, the first call of the expediente says the last 50 cords ended in a thick forest, where I ordered to be put a cross monument; did you find any such forest there?

A. Yes, sir; I found an oak forest; it is not a very dense one, but in some places rather dense.

45 Q. Did you find any monument there?

A. Yes, sir; I found indications of a small monument there.

Q. Is that correctly represented on your map?

A. Yes, sir.

Q. The second call, the last 50 cords ended in the dry creek Del Malpais; did you find any monument there?

A. I found a small monument.

Q. Where was it?

A. Right on the bank, more or less, of the arroyo.

Q. Describe that arroyo.

A. It is about 400 feet wide, and the creek bed is very rocky; tons and tons of rock in there, broken rock.

Q. What does malpais mean?

A. It means bad lands.

Q. Is that the kind of rock generally known as malpai?

A. I generally call it malpai rock; that is the kind that I generally call malpai.

Q. Have you seen any other place in that country that might be called *matpat*, known generally as *matpat*?

A. No, sir.

Q. The third call echoed at the ascending slope of a red table-land; did you find any such red table-land?

A. I did.

Q. Was there any monument there?

A. No; I could not find any monument there. I found a very small monument, but I could not tell what it was.

Q. Ascending the table-land and going further southwest, did you find anything?

A. I found a small monument, 4 foot base and 14 foot high.

Q. You have represented on your map here certain hills; will you describe how far or where that monument is with respect to the Huachuca mountains?

A. That is, I should judge, a mile south of the Huachuca mountains, as I have been informed that this, more or less, — dividing line between the Huachuca—this place marked Smugglers' gap.

Q. About how far is this southwest corner from that?

A. About $\frac{3}{4}$ of a mile.

Q. Did you find a monument at the northwest corner of this grant?

46 A. Yes, sir.

Q. Describe that monument which you found there.

A. That monument is ten feet base and one foot high; an old monument.

Q. Have you that correctly represented on your map?

A. Yes, sir.

Q. Where is that monument with respect to the Huachuca mountains?

A. It is right at the foot of the Huachuca mountains, part in the valley.

Q. I will ask you something about what you have marked here on your map at Palominas, old ruins. Will you describe that?

A. That is a new adobe house there at Palominas—I mean new compared with these that I found—and also indications of old ones.

Q. Old adobe houses, do you mean?

A. One traces the foundations of these buildings and in some cases you can notice the walls about a foot above the ground.

Q. With respect to the Mule mountains, where is the northeast corner of the San Pedro grant?

A. The northeast corner of the San Pedro grant is about 2 miles and a half southwesterly of the center of the Mule mountains, more or less.

Q. Did you take an observation south of the lands that you located in the San Pedro grant?

A. Yes, sir; I did.

Q. State whether or not to the south of the San Pedro grant there is any picacho which would correspond to the call that you have made the location of the southeast corner monument on; state what

you saw as to any peaks south of that vicinity in which the southeast corner monument was located on your map.

A. Standing at a point where the southwest line intersects the international boundary line, I can see the Ago mountains, 40 or 45 miles away, and towards the southwest I can see the mountains, probably 20 miles away, and standing at the monument which is close to the southwest corner here of the grant I observed a very high peak, probably 40 miles away, called the Malayan peak. These are the only points that I observed south.

Q. What is the scale of this map?

A. 40 chains to an inch or half a mile to an inch.

Q. State what actual measurements you made on the ground.

A. Well, in fact, all these lines were made by actual measurements; they were chained.

Q. You have dotted lines here upon your map; what do they represent at different points?

A. They represent mountain peaks.

Q. Take these lines here at the northwest corner of your map and state what they represent.

A. These lines represent peaks—that is, to the highest point of the highest peak of the Huachuca mountains.

Q. What is this bearing at the northwest corner to the highest peak of the Huachuca mountains?

A. South 65 degrees 50' west.

Q. And from the center monument to the same peak?

A. North 69 degrees 30' west.

Q. And from the highest peak of the Huachuca mountains to the northeast corner?

A. South 83 degrees 30' west.

Q. And from the high peak of the San Jose mountains to the northeast corner?

A. South 19 degrees 30' east.

Q. And from the high peak of the Huachuca mountains to the southeast corner?

A. North 57 degrees 50' west.

Q. And the bearing from the Magajana peak to the southwest corner?

A. South 55 degrees 15' east.

Q. What is the bearing from the center monument to the highest peak of the San Jose mountains?

A. South 58 degrees 40' east.

Q. Now, state, if you can, the number of acres included within the lines as represented in the San Pedro grant in the United States.

A. In the United States, 38,622.6 acres; in Sonora, Mexico, 17,509.7 acres.

Cross-examination by Mr. Pope:

Q. When did you go down on this tract?

A. The first time I went down on the 15th of April of this year.

Q. How long were you there?

A. I went down there twice. The first time I was there 4 days with Mr. Cobb, and the next time I was there probably ten days.

Q. When did you go this last time?

A. Just a few days later, from the 20th to the 22nd.

Q. Was Mr. Cobb with you on this trip?

A. No, sir.

Q. How long have you been surveying?

A. In the United States about 9 years.

Q. What is your age?

A. 34.

Q. I believe you said on your former examination as to your having lived in Tucson?

A. I lived here up to the time I was 4 years of age, and then went to Germany and lived there for about 7 years, and lived here three years, and then went back again and stayed there probably 6 years, and came back here in '89 or '90, and lived here in Tucson since then.

Q. Have you lived down in that San Pedro country?

A. Never did.

Q. Your purpose in going down was to make a survey under employment?

A. Yes, sir.

Q. Were you paid for it as a professional surveyor?

A. Yes, sir.

Q. And you run these lines as they were shown you?

A. Yes, sir.

49 Q. You have simply run your points that were fixed?

A. Yes, sir.

Q. When you went to make this survey, what did you have with you as to papers bearing on this tract?

A. I had a copy of the translation of the papers and also Spanish.

Q. Do you understand Spanish?

A. Fairly well.

Q. Have you had any familiarity with the class of old Spanish papers, or is your knowledge of the Spanish largely conversational?

A. Chiefly such as I have acquired.

Q. You do not pretend to have any special knowledge, technical knowledge, required in the examination of these grants?

A. No, sir.

Q. The copy of the Spanish you had, where did you get that?

A. I got it from Mr. Hereford.

Q. The same copy that is tendered in evidence here?

A. It is.

Q. As a matter of fact, the translation that you had—did you make the translation which you had?

A. I did not make any translation.

Q. The translation was handed you by Mr. Hereford?

A. Yes, sir.

Q. The same translation tendered here in evidence?

A. Yes, sir; the same translation which was used in the San Rafael del Valle case.

Q. You said that you surveyed this grant on the theory that it was a grant with a center?

A. Yes, sir.

Q. That was the theory on which you went down and surveyed it?

A. Yes, sir; and from the topographical features on the ground.

Q. And what as to the expediente, what did you gather from the Spanish as to where it was?

A. That was rather defective. I found that you can construe it two ways, one inside of the exterior points and the other run around the tract.

Q. But you surveyed it from the center?

A. Yes, sir.

50 Q. You did not rely, then, upon the expediente at all?

A. I went by the calls, of the topographical calls, I should say, in making this survey; the expediente, the Spanish and the expediente, said that there was a grant measured from the center; the title papers stated that they were centered and headed.

Q. Do you remember what the Spanish word was?

A. Well, I do not know.

Q. I will read it over; I will get you to look here at this copy of the Spanish and that particular word; here is a copy of the Spanish; just look at that and state what particular word is there to indicate that.

A. Here it is; start right here—con cuyá operacion quedan huviendos Cavescados medidos y sentruados.

Q. You translate that word as centered?

A. Yes, sir.

Q. You have never looked at your dictionary with a view of determining what it means?

A. No, sir.

Q. Do you know any other translation than centered for that word?

A. No, sir.

Q. That word occurs also in the petition, does it not; in the petition for this grant you will find the same word?

A. That is written differently.

Q. Is it the same word?

A. No, sir; I would not take it to be the same word.

Q. What is the meaning you would give it here; just look at that?

A. It would be centered.

Q. You have not read that to know what it refers to in the context?

A. No, sir.

Q. And if there was nothing in this expediente from beginning to end outside of this to show any center was intended, you would still feel that it meant centered, would you?

A. No, sir.

51 Q. What else is there in the expediente, then, that shows there was a center to this?

A. There is nothing to show whatever.

Q. The only thing that has guided you is the topography outside of this, then, and outside of this one word there is nothing in the expediente to show that there was a tract laid off from a center?

A. No, sir.

Q. As a matter of fact, in these Spanish grants where the tract of land was laid off from a center they were laid off to the cardinal points, were they not?

A. Generally.

Q. Do you know of an instance where they were not laid off from the cardinal points from a center?

A. That is the only one that I know anything about.

Q. It does not say exactly that the lines run east and west or north and south, but it gives the course?

A. Yes, sir.

Q. In this instance there is no course given; simply a statement of directions?

A. Yes, sir.

Q. And that general statement of direction from a monument under one construction might be an exterior monument and under another instruction might be a center monument?

A. Yes, sir.

Q. Now, in some instances these Spanish grants were laid off without any center?

A. I do not know anything about that.

Q. Don't you know that the Nogales grant was a grant made from an exterior monument and not a center monument?

A. I do not know.

Q. Did you ever go over the Spanish with a view of determining from the Spanish as used just what was meant as to there being a center or what was meant?

A. It appears it was surveyed from an exterior point.

Q. And where did you take the exterior point, the starting point on the exterior?

A. Well, I take it to be close to the river somewhere.

Q. Well, where in this case?

A. I cannot locate such a point on my map.

Q. You did not, as a matter of fact, locate it?

A. No, sir.

Q. The expediente says you are to start from a point on the exterior?

A. Yes, sir; it appears that way.

Q. Read it. Did you attempt to locate it according to that expediente?

A. More or less, I did.

Q. Why did you?

A. I tried to locate some point; more or less, I tried to fit it to said land.

Q. And you could not find any point that would fit—natural objects to locate them?

A. That is right.

Q. As a matter of fact, the grant says: "I caused a monument to be placed at a rectangular corner"?

A. I believe it says a square monument.

Q. Your location of that monument was where you put the center monument?

A. Yes, sir.

Q. Could that be a corner monument?

A. No; it is a center monument which explains where the corner is.

Q. A monument at which two boundaries come together, forming a right angle?

A. No, sir.

Q. If this tract had exterior boundaries of 200 cords or 2 leagues on a side, that would make 4 sitios in a square?

A. Yes, sir.

Q. And 4 sitios was what was granted in this case?

A. Yes, sir.

Q. You started from the center monument and ran the measurements in each direction, 200 cords northeast and 200 cords southeast and 200 cords northwest and 200 cords southwest?

A. Yes, sir.

Q. Would that make a grant of 4 sitios?

A. No, sir; about 8.

Q. That theory you have adopted conflicts with the quantity named in the expediente?

A. Yes, sir; it does.

53 Q. In fact 4 sitios is 16 or 17 thousand acres?

A. Yes, sir.

Q. And that includes in this survey something like 56 thousand acres, including that in Mexico?

A. Yes, sir.

Q. About 17 thousand acres in Mexico?

A. Yes, sir.

Q. Did you get this by going down on the ranch of San Pedro?

A. I did not; no, sir.

Q. Your survey does not include the ranch of San Pedro?

A. It does not.

Q. And how far is it from the south line of this tract?

A. About 5 miles.

Q. Now, coming back to the expediente which says, "I caused a monument to be placed at a rectangular corner," you took that to be the center monument?

A. Yes, sir; and towards the northeast I ran north 60 degrees 23' east.

Q. Where did you get that course?

A. I got that from the position of the monument at the Cañada de la Bachata.

Q. Look at this copy of the expediente which has been introduced in evidence by the claimants and state what authority there is for running that from the southwest to the northeast; here it says "southwest to northwest"?

A. Yes, sir.

Q. Did you do that?

A. I did not.

Q. How did you go?

A. I had the topographical features. I found I must go to these courses, then.

Q. Is that course intelligible?

A. No, sir.

Q. From the center that course would be just the reverse?

A. Just the reverse.

Q. It would be just interchangeable?

A. Yes, sir.

Q. You made the translation from northeast to southwest?

A. I believe so.

54 Q. And that is the basis upon which you state you reversed it?

A. Yes, sir.

Q. The original Spanish is not capable of being reversed at all?

A. No, sir.

Q. These various monuments that you spoke of, they are simply piles of stones throughout the country?

A. Yes, sir.

Q. You have seen a great many of them?

A. I have seen a great many monuments like these.

Q. There is nothing peculiar about them; just a pile of stones?

A. That is all.

Q. You got a great many dotted lines or a great many roads or trails on your map?

A. They are roads.

Q. Is that section of the country traveled over a good deal?

A. Yes, sir; fairly.

Q. From San Pedro and going up the valley?

A. Yes, sir.

Q. Now, it says, "There were measured and counted fifty cords, the last of which terminated down the river from the house on the edge of the ford," at the fall; what do you take that fall to mean?

A. It means some kind of a fall in the river.

Q. Do you think it means rapids?

A. Water rapids or some kind of waterfall.

Q. Could it mean caída, slope of the bank?

A. Well, yes, sir; I think it would mean that too, also.

Q. It could mean the slope or bank or fall of the river?

A. Yes, sir; the bank of the river.

Q. Did you find along the San Pedro river what would answer to that description?

A. There was a slope in the bank; I do not know whether it would be taken in connection with the other.

55 Q. You mean standing by itself?

A. Yes, sir.

Q. You stated you did not go down to San Pedro.

A. No, sir.

Q. Your investigation was confined to the section of country north of the international boundary line?

A. Yes, sir.

Q. After they got to this place on the edge of the bank they placed a cross monument?

A. Yes, sir.

Q. Where did you locate that cross monument?

A. I merely located it as a pile of stones that might be the monument.

Q. In what sense is that a cross monument?

A. I cannot tell you.

Q. There is nothing about it to indicate it as a cross monument?

A. No, sir.

Q. It says from there there were measured—that is, from the point where this cross monument was placed—and counted 50 cords; what is the Spanish of that?

A. From there the Spanish is desde elle.

Q. That you consider to mean from there?

A. Yes, sir.

Q. From where; from that monument?

A. Yes, sir.

Q. You did not go down below San Pedro, where the ranch of San Pedro is, with a view of seeing a hillock or loma that would conform to the description of this?

A. No, sir; I did not go down there.

Q. Now, these Huachuca mountains, I believe you said you represented them stretching down, a portion of them, across the international boundary line?

A. Yes, sir.

Q. You did not take an observation from the ranch of San Pedro as to how these mountains appear from the south?

A. I did not.

Q. As to whether they stand out from that valley?

A. No, sir.

Q. You did not go down there to investigate that?

A. No, sir.

Q. The second call here it says, at the edge of a hillock, loma, distant three cords, where I had a corner monument placed;
56 what is the Spanish for that?

A. Desde elle.

Q. What kind of a monument is that; what does the title paper say it is; what is the Spanish?

A. It says a corner monument.

Q. That is different from a cross monument?

A. Yes, sir.

Q. Where is that corner monument on this map?

A. It is marked old stone mon., scattered stones in valley near a hillock.

Q. And from it there were measured and counted fifty cords, the last of which terminated in front of the Guachuca mountains, where

I had a cross monument placed on a rocky hillock, loma; where is that?

A. There is no *corss* monument; it is merely a monument.

Q. It has no significance to a corner or a *corss*?

A. No, sir; it is somewhat on a line; that is all.

Q. From this *corss* monument it says: And from it there were measured and counted fifty cords, the last of which terminated on a table-land where I had a corner monument placed; what is the Spanish from there?

A. Desde elle.

Q. From there is from where?

A. From the monument.

Q. You did not go back to the center?

A. No, sir.

Q. And from there there were measured and counted fifty cords, the last of which terminated in the cañon of the Bachata, where I had a *corss* monument placed, general boundary and dividing rectangular corner; this monument which you got at your northeast corner, is that or is it not a rectangular corner?

A. It becomes the corner for the tract on my instrument, under the center-monument system.

Q. Is there any line converging at that monument with another line which makes a right angle there?

A. No, sir.

Q. Now, here it says it is a general boundary and dividing rectangular corner; the word just following that, what is the Spanish of *enserrando este caveeado*; how is that translated?

A. Enclosing this head line or completing this head line.

Q. The line that is just completed?

A. Yes, sir.

Q. Is that under our system the head line?

A. It is.

Q. Does that or not mean a side line?

A. It appears to be a side line from the description in the expediente.

Q. It means head line or side line?

A. Yes, sir.

Q. This line from the center monument to the Cañada del la Bachata, is that a side line?

A. It is not; no, sir.

Q. Now, suppose the starting point instead of being a center point was a point on an exterior boundary, would or not that line be a side line?

A. Head line.

Q. It would?

A. Yes, sir.

Q. How does that constitute any part of a figure of the center of a true square?

A. It does not; the exterior lines on the side would make a part of a true square.

Q. After he does that, what is the Spanish as to what he does, and

in the figure of a true square, two hundred cords, which make two and a half leagues; what is the Spanish from there?

A. Desde ahí.

Q. And what does that from there mean?

A. It means from that monument.

Q. In other words, it means from the monument at the Bachata cañon?

A. Yes, sir.

Q. You come back from the center and run from there?

A. By starting from the center monument that would make the line more perfect.

Q. If you start from the center monument, from there means from the point where the monument is?

A. Yes, sir.

Q. And if they measured from the Bachata cañada that would be from the point in the Bachata cañada where the monument was?

58 A. It appears to be there just by reading it.

Objection to any inference.

Q. That is where it appears in the expediente?

A. It does.

Q. You went back then and ran a line down towards the picacho; that was the next line?

A. Yes, sir.

Q. They came back to the center and started the line?

A. Yes, sir.

Q. But that construction of the word centered conflicts, does it not, with your idea that he started from this monument at the Cañada de la Bachata?

A. Yes, sir.

Q. Now, he says, "taking the course northwest to southwest, there were measured and counted fifty cords, the last of which terminated in the middle of the valley of the San Pedro river, where I had a corner monument placed;" where did you put the Arroyo del las Barras?

A. Right there at the place marked Arroyo del las Barras.

Q. What did you say bassas means?

A. It means switches, but there are very few trees in that section.

Q. That whole country is covered with a black growth, over here in the southeast quarter of your map?

A. Yes, sir; a great deal of black brush.

Q. They continue along there until you get to the slope of the peak?

A. Yes, sir.

Q. Is that peak on a high elevation near the ranch of San Pedro?

A. No, sir.

Q. Where is it with respect to that?

A. I should judge about 7 miles northeasterly of the San Pedro ranch.

Q. And about at the north end of that Cerro de San Jose?

A. At the southwest end of the Cerro de San Jose, at the west end.

59 Q. Did you go down to San Pedro or make any investigation with a view of finding any old houses at the end of the fifty cords following down that valley?

A. I did not.

Q. You made no investigation down at San Pedro at all?

A. I did not.

Q. How did you get this course from your center monument down to the picacho or to the slope of the picacho to this old monument here, marked old stone monument?

A. It was pointed out to me by Apodaca; he lives at Palominas.

Q. Is he one of the claimants of this grant?

A. I do not know.

Q. He lives at Palominas?

A. Yes, sir.

Q. Is there anything in the expediente that indicates what the course is; I wish you would refer to the original Spanish; it says here from the northwest to the southwest; is that intelligible?

A. No, sir.

Q. Is it intelligible in the reverse?

A. No, sir.

Q. How did you get that direction; is there anything in the expediente?

A. Yes, sir; it is where this oak forest is.

Q. What kind of trees are these as to size?

A. The size of them is about from one to two feet in diameter; oak trees.

Q. Does the expediente say oak trees?

A. It says dense forest or thick forest.

Q. On which side of the river is it?

A. On the west side.

Q. Is there anything in the expediente that indicates what the course is?

A. No, sir.

Q. Just turn to the expediente and see what it says about the course.

A. It says from the northwest to the southwest.

Q. Is that course intelligible?

A. No, sir.

Q. Is the reverse of it intelligible?

A. No, sir.

60 Q. It means nothing?

A. No, sir.

Q. You spoke of malpai rock in that country; as a matter of fact, there is a great deal of malpai rock in that section of country?

A. I do not know.

Q. Did you go down to this particular point?

A. Yes, sir; I did.

Q. What is the extent of the malpai rock in there; is it on the road to Bisbee?

A. Yes, sir; malpai rock, very rock mesa.

Q. On the road, on the east side of the river?

A. Yes, sir.

Q. You do not meet malpai on this side of the river?

A. No, sir.

Q. There was a pile of stones out there?

A. Yes, sir; small stone monument.

Q. That pile of stones was simply a loose pile of stones?

A. Yes, sir.

Q. Just like any of these others in that country?

A. Yes, sir.

Q. Now, where he says after he ran from the center monument down here to the southwest corner, he says, from there he took the course from the southwest to the northwest; what is the Spanish and from it?

A. Y desde ella.

Q. What is the gender of the Spanish ella?

A. It refers to a female; it is feminine.

Q. What do you think it refers to there, from it?

A. It means from that monument.

Q. The last monument established which was down here?

A. Yes, sir.

Q. Did you run the next line from it; did you do that?

A. I did not; every time I returned to the center monument.

Q. There is nothing to indicate that you should return to the center?

A. No, sir.

Q. Desde elle means from there?

A. That is the way I would translate it.

61 Q. This last course of 250 cords was measured to no monument?

A. No, sir.

Q. Can you conceive any reason why they did not put up a monument at the end of that?

A. I cannot.

Q. Suppose you described a perimeter of a tract of land measuring such a distance and such a direction and came back to the starting point, would there be any necessity for it?

A. No, sir.

Q. You would have a boundary which is there already when you came back?

A. Yes, sir.

Q. Now, will you turn to the Spanish towards the end, the words quedan huvicados caveseados; does not it mean side lines run?

A. Is it the same word you have had up before; I would take it to be head lines.

Q. Is there a single head line on this tract?

A. No, sir.

Q. As you measured it in order to establish head lines you would have to run lines to these?

A. Under this system I can just as well establish head lines.

Q. But these monuments you have not established; you have established simply corners from which you made your head lines?

A. Yes, sir; but these were located and headed or enclosed.

Q. By this operation this survey was made?

A. Yes, sir; it means headed or it means head lines; it means that they were headed; that they had head lines in the exterior boundaries.

Q. Have you laid off any exterior boundaries, as a matter of fact, have you?

A. Yes, sir; this line is established by these two monuments.

Q. Now, from the international boundary line south to the picacho there is a great deal of brush, south and west?

62 A. Not so very much; it is a kind of oak.

Q. Did you go on the Naco road?

A. No, sir.

Q. How do you translate this word monte?

A. A tract of trees; a tract of land covered with trees or brush; the same word in each case it should be.

Q. You do not have any doubt about as applied to a clump of oaks?

A. No, sir.

Redirect examination by Mr. HEREFORD:

Q. Examine that expediente, copy of Spanish; is there any course given in that which you could have followed and located any line in this land grant?

A. No, sir.

Q. Can you take all the courses in that grant and locate any square piece of land?

A. No, sir.

Q. Then in surveying this land grant did you attempt to apply the courses as laid down to a tract of land before choosing this way?

A. No, sir.

Q. Why did you not?

A. Because I could not make it fit.

Q. In regard to these monuments, which you have been testifying to, was there anything in the appearance between the corner and the cross monument?

A. No, sir; they were merely common monuments.

Q. Then, by taking into consideration the fact that one monument was called corner monument and another was called a cross monument, could you, by their different designations, locate this land grant?

A. No, sir.

Q. What did you find then?

A. The topographical features.

Q. Describe that center monument.

A. It is a very old monument.

Q. Is that the only monument that you could find located there?

A. Yes, sir.

63 Q. The first call over here being easterly calls for a cross monument up here; the first call from the center monument being southwesterly calls for a corner monument down here; can you explain that?

A. I cannot.

Q. Is it possible, from your knowledge, to explain it any way?

A. No, sir.

Q. Now, in regard to the monuments generally around on this grant, could you have just as well taken a tract off miles and found monuments as you could in the places you found them?

A. No, sir,

Q. Was there anything different in these principal monuments that indicates to you their being special monuments?

A. Yes, sir; they appear to be special monuments, because they were large.

Q. Take in the middle of the valley, did you find any monuments besides the center monument, stone monuments in the valley, old stone monuments; did you find any other monuments than these?

A. I did not.

Q. Going further north in the valley, did you find any monuments in the valley besides these?

A. I did not.

Q. Now, regarding the meaning of these different words desde elle; will you examine the expediente and see whether or not the same word is used constantly in that expediente?

A. It differs.

Q. Does not the word desde mean from there?

A. Yes, sir.

Q. And generally it means from the place?

A. Yes, sir; it means from there; from the place.

Q. There is nothing in the expediente that it means from a certain monument; to indicate that it means from a monument, is there?

A. No, sir; but I should infer that it means from the monument.

Q. However, you draw that inference simply from the context?

A. Yes, sir.

64 Q. When you went out there to survey that land grant who selected that center monument and who determined upon these courses?

A. I selected that center monument.

Q. Did any one locate it or tell you where to go for the center monument?

A. Not a single soul.

Q. How did you happen to select that monument then?

A. Because I adopted the center-monument theory, and, taking the topographical features into consideration, that was the only one that I could adopt.

Q. What feature is towards the southwest?

A. The forest; I crossed the river and finally I came to the peak.

Q. Counsel for the Government asked you if there was a square

laid off with 200 cords on each side there would be more than 4 sitios, and I believe you said yes.

A. Yes, sir.

Q. As a matter of fact, the calls of this grant call for 250 cords; if a square was laid off, what number of sitios would there be?

A. $6\frac{1}{2}$, about, more or less.

Q. Then there would be $6\frac{1}{2}$ sitios instead of 4?

A. Yes, sir.

Q. Now, in regard to the questions asked you with respect to your knowledge of Spanish, you were asked about the word sentruados; you were asked whether with your technical knowledge of Spanish how you would translate this; how would you translate it?

A. I would translate it centered.

Q. Is your technical knowledge of Spanish sufficient to interpret this?

A. Yes, sir.

Q. You say the meaning of that word was centered?

A. Yes, sir.

Q. You were asked the question about the word caveseados; what is the meaning of that word?

65 A. That means headed; it means that they had a head line.

Q. As a surveyor, if you had run each of these four lines, one to the northeast, one to the southeast, one to the northwest, one to the southwest, and established monuments at each one of these corners, would you have used the language used in that expediente on your work?

A. Yes, sir.

Q. Is there any other word explaining the word centered, besides the one which you have given, which you know of?

A. No, sir.

Q. Who selected these four monuments as the corner monuments of that grant?

A. I did.

Q. Why did you do it?

A. Because of the topographical features and the monuments I found in connection with them in the expediente made me adopt them.

Q. There is one call here ending in front of the Huachuca mountains; can you tell where the front of the Huachuca mountains is on that map?

A. Standing on this little rock here and looking westwardly, you are in front of the Huachuca mountains.

Q. How about any point south of the international boundary line and being in front of the Huachuca mountains; would you consider that being in front?

A. Well, to a certain extent, I would, taking into consideration the southern foot-hills, or away down in the open valley.

Q. The Mule mountains lie directly east of this grant?

A. Yes, sir; a portion of them.

Q. How much?

A. Probably 2 miles.

Q. Do you know where the San Rafael del Valle land grant is?

A. I do.

Q. Between what mountains is that grant?

A. It is located between the Mule mountains and the Huachuca mountains along the San Pedro valley.

66 Recross-examination by Mr. POPE:

Q. You spoke of examining the topographical features.

A. Yes, sir.

Q. Did you examine the topographical features around San Pedro?

A. I did not.

Q. Did you go to the place called Las Nutrias?

A. I did not.

Q. Do you know where it is?

A. I have seen where it is.

Q. It is down toward the southwest, near San Pedro?

A. Yes, sir.

Q. Southwest of the ranch of San Pedro?

A. I believe so.

Q. Mr. Ashton was down there when you were making this survey?

A. Not while I was making the survey; I believe he was on the tract; I did not see him.

Q. Didn't he tell you about this center monument?

A. He told me about the old monuments; he told me about an old monument out there.

Q. That is the one you went to?

A. Yes, sir.

Q. Do you know Mr. John Ashton?

A. I do not.

Q. Mr. Ashton claims an interest in this grant?

A. Not that I know of.

Q. He lives on this grant?

A. Yes, sir; he lives at Palominas, one mile north of the international boundary line.

Q. Can you give an dictionary authority for translating that word centered?

A. No, sir.

Q. You never looked in a dictionary for that word?

A. Never did; I would take it to be centered.

Mr. HEREFORD:

Q. What does Las Nutrias mean?

A. It means beavers.

Q. Do you know whether or not there are any beavers in the San Pedro valley?

A. Any amount of them; all along clear down in Sonora.

HORACE H. COBB, sworn on the part of the plaintiff, testified, upon direct examination by Mr. Hereford, as follows:

Q. Where is your residence?

A. Fort Worth, Texas.

67 Q. What is your business?

A. Land and mortgage company.

Q. Have you an interest in this land grant?

A. Small interest.

Q. Do you know George Ashton, who lives there?

A. I saw him once.

Q. Has he any interest in this land grant?

A. No, sir.

Q. What has been your business before you became connected with the land and mortgage company?

A. It was in the same line; loaning money on real estate.

Q. Have you ever had any practice in locating real estate?

A. It has always been my practice to examine the lands.

Q. Have you had any experience in surveying?

A. I have assisted a good many men in locating lands.

Q. Did they give you any knowledge of the methods of surveying as to surveys made from their field-notes?

A. Yes, sir; all our surveys in Texas are by field-notes; I have seen many of them.

Q. Have you ever noticed how they start a new course or a new line in surveying?

A. A surveyor usually keeps his notes in brief form, giving his courses and distances with nothing to connect them.

Q. Have you been on the land embraced in the San Pedro land grant?

A. Yes, sir.

Q. Will you state to the court what you saw out there regarding the natural objects in the country such as the picacho, cañons, monuments, and other matters in relation to the grant; in other words, describe what you did out there, and in searching for the monuments in the location of this grant?

A. Well, I arrived at Mr. Ashton's about the 15th or 16th of April; on the next morning he told me of this large monument about 2 miles west of the place where he lives, and also of this old monument which is spoken of as the old stone monument; in the morning we went to this large monument directly west of Ochoaville and found a very large and well-built monument, apparently very old, and nothing
68 to discredit it that we knew as in distinction from this next one which we visited as a monument of the grant; that was discredited from the fact that it had on it indications that it was not an old monument, but nothing of the kind at this one which we concluded was the center monument; from there we drove over this line; I was familiar with the field-notes and calls; the first call is in the center or the middle of the valley of the San Pedro river, which is here; there was nothing there in the way of a local land-

mark; then the next call was after passing the river on the crest of the hill; the next call passes the river on the hill which we found is a bluff on the west side, which is perhaps 30 or 40 feet high; that is on the east side of the river; on the west side of the river there is no bluff, but on the east side there is about 30 or 40 feet high; following these courses, we went along this little wash in which there are a great many bushes growing 6 or 7 or 8 feet high, but we found no monument; this was before the survey; we were merely making a reconnoissance; we were noticing the ground looking for landmarks, and up here we looked for two or three hours, or perhaps not more than 2 hours, but did not travel very much, and finally, just at the beginning of the slope, we found what appeared to be an old monument, and from there we drove back on the west crest, the north edge of this hill, and stopped and looked for a monument that would answer the call of the expediente, but we did not find any; then we went back at the slope on the bank of the San Pedro; the next morning we went west to this grove—forest; here we drove from here to the point of the next call, the Arroyo del Malpais, the arroyo of the bad lands; there we found probably at a distance of about 3 miles from the center monument, as we located this wash, and we must have traveled 7 or 8 miles, and we traveled up and down; it is 69 in width from 50 to 200 feet, and is very rocky, indeed, by far the most rocky of anything we saw; here there were

narrow gulches, narrow and steep; and the next call we were looking for the red mesa, and we got within a quarter of a mile of it; we got to the red banks of the mesa, and on the top of the mesa the grass was growing, which showed a reddish color, a mile on this side was turning a little of that color as we went this way; it was distinctly red; I did not go quite as far west as this, but followed more down here, and found nothing that would satisfy the call as a monument; then we went back to Ashton's and stayed over night, and the next day went to the center monument; we drove directly to this ford or rapids, and Mr. Ashton followed us on horseback; we started and we passed this monument here on the mesa, standing here on the edge of the mesa; it is there marked monument, evidently very old and fallen down, but unmistakable signs of being a landmark, and then we came to the Bachata gulch and found there a considerably larger, well-defined monument; that was all as far as going over the lines was concerned.

Q. Standing here at the center monument looking in a southeastern direction, are there any picachos?

A. The San Jose mountains show a line of about 5 or 6 peaks as here; the last one is perhaps here at this monument, I would say probably 2 miles this way; a southeast line would pass the most southern of these; there are no mountains in this southeast direction for a very long distance; I think perhaps 20 or 30 miles.

Q. These picachos in the San Jose mountains you spoke of would cover how much?

A. I would judge about 3 miles would cover the entire 6 picachos.

70 Q. Then taking as far as you can see south of that, were there any other picachos?

A. Nothing to be seen in this south or southeast direction for at least 20 miles.

Q. Do you know where the Huachuca mountains are?

A. I know what they call the Huachuclas west of this grant.

Q. The expediente calls for a monument in front of the Huachuca mountains; did you locate that monument?

A. Yes, sir.

Q. Going on, then, further did you find the Arroyo del Malpais?

A. Yes, sir; most of the arroyos had a few stones in them.

Q. This oak forest designated on this map, did you see any other oak forest?

A. I did not see any other.

Q. Did you go to Palominas?

A. Yes, sir; Ochoaville.

Q. Did you find any ruins of monuments or anything else there?

A. There is an adobe house and some large store buildings, but not very old; they pointed out what they said were old ruins; the adobe has melted almost back into the earth again; in many places only 6 or 8 inches high.

Q. You did not go any further south than the place you have indicated south of the line?

A. No, sir.

Q. This cañon over here called the Cañada de la Bachata, will you describe that?

A. That is one of the largest washes we saw on the east side of the valley. It has considerable soil in it and very rocky, but a good many black bushes.

Q. What kind of a monument was that that you found up there?

A. That was an ordinary, not a very large, monument, but larger than most of the interior monuments that I saw; not as large as the southeast.

Q. Describe it with respect to size.

71 A. I would say about perhaps a foot and a half or 2 feet, a little base.

Q. The southeast monument, describe that.

A. It is inside of the foot-hills and perhaps about a 100 or 200 feet from where the mountains at that place begins to drop from the southeast slope of the mountains; it is on the slope where the gulch comes down; it is quite a large monument, but it has not been built up for many years, and to say exactly its size or width, I could not say; it shows unmistakable signs of being a landmark.

Q. Now, referring to the monuments over that country there, did you find any such monuments as that at the center?

A. No, sir.

Q. Are there any that you might have taken as well as these on these corners?

A. None that would answer the calls; I do not at this moment recall any that we saw that we considered at all except these I have testified to.

Q. Did you examine the river in the vicinity of where this north-east line comes to?

A. Yes, sir; we crossed the river twice at that ford.

Q. What, if anything, did you find in or around the river at that point?

A. There seems to be called for in the expediente, as I understand the translation, rapids in the river, and I looked especially for that, but it is plainly enough to be seen; the river bank above, on most places around there, is about in the neighborhood of 15 or 20 feet high; the valley is cut clear through the alluvial soil, squarely cut; along here, by reason of the underlying gravel, the river is within 6 feet of the ground and then directly below from the alluvial soil on its old depth, making it fall on exactly the rapids and bearing it down several feet.

Q. Where did the road that crossed that river pass with respect to that ford?

A. This ford is above—directly above where the falls are; that is really the reason the ford is made there, because it is shallow.

Cross-examination by Mr. POPE:

Q. You say you live in Texas?

A. Yes, sir.

Q. When was the first time you were down on this land?

A. At this time.

Q. Have you ever been in Arizona before?

A. Never.

Q. How long were you out there?

A. Four or five days altogether; we were there three days, I think.

Q. Then you came back to Tucson?

A. Yes, sir.

Q. You know Mr. John Ashton?

A. Yes, sir; I suppose I do not know his given name.

Q. Mr. Ashton lives on this land?

A. Yes, sir.

Q. Is he a claimant of the grant or in behalf of the grant?

A. He has no interest in the grant. He has a little interest in this way, that his brother's wife owns an interest in the grant—his deceased brother's wife.

Q. What is he doing on the grant?

A. He has some cattle.

Q. Is he in charge of his brother's wife's interest?

A. I do not know anything about that—the trade between them, whether she has an interest in the cattle or not. I understand that he had no interest in the land.

Q. Did he go with you to these monuments?

A. He went with us to the monument west of Ochoaville, but we found that before he got there.

Q. You had a certified copy of the expediente?

A. Yes, sir; a translation of the Spanish.

Q. Did you have a map of the grant?

73 A. We had some old plats. We had one made by Mr. Howe and also had one or two smaller plats used before the surveyor general.

Q. You say this center monument was well built up?

A. It is a good height.

Q. Is it piled up?

A. It does not show any signs of being tampered with.

Q. Is it piled up?

A. It was built up in a substantial monument.

Q. What kind of a monument?

A. In a conical form, pretty large cone, the largest at the bottom and about 4 feet high, coming to a point on top; it did not come to a sharp point, but still it was—had been evidently been built up long before and settled down.

Q. It was not a scattered pile of stones like that, was it?

A. Yes, sir.

Q. You think it looks like it was built up like that (Plaintiff's Exhibits F 22 and F 23)?

A. Yes, sir; I am not positive about that, but it looks like that.

Q. This is the conical monument that you call it?

A. Yes, sir.

Q. Do you understand Spanish?

A. Not very much; I was able to make something out of it.

Q. You do not talk Spanish in Texas?

A. No, sir.

Q. What you picked up you picked up since you have been out here?

A. With the aid of a dictionary I can read it after a fashion.

Q. What is meant by this word malpais?

A. Well, as I understand, it means bad or rough.

Q. You thought it was the Arroyo del Malpais because it was rough?

A. No, sir; because it was practically all rocky lands. It is an arroyo of rough, rocky lands; the rocks were not large; I do not know anything different from other rocks except in that river
74 most of the stones were small, but in the other they were quite large.

Q. This kind of rock you see all over the country; the kind they made use of in these monuments?

A. Most of the stones in the country are rather small cobblestones.

Q. Any otherwise those in that arroyo was that they were larger?

A. Yes, sir.

Q. That is why you thought it was malpais?

A. It answered the calls in the expediente.

Q. You thought it answered the calls in the expediente?

A. Yes, sir; that is what I supposed. I took this entirely from Mr. Contzen, and this I did not find in the dictionary at all; the dictionary I had was a small one.

Q. You had a dictionary along with you?

A. I had a small one.

Q. Most of these matters you have testified about you talked about with Mr. Contzen?

A. Yes, sir.

Q. Took his word for it?

A. Yes, sir.

Q. Now, where were there unmistakable signs of landmarks?

A. The monuments convinced me and the calls of the expediente.

Q. So it was these monuments taken in connection with the expediente that you considered unmistakable landmarks?

A. It was the calls of the expediente that made me believe they were the landmarks of the San Pedro grant.

Q. These monuments were simply piles of stones, were they?

A. Yes, sir.

Q. Have you ever seen a pile of stones that was not a landmark?

A. Yes, sir.

Q. How did these differ from the piles of stones that were not landmarks?

A. I do not know; I cannot tell the difference between them.

75 Q. There were many of them; you have seen many of them?

A. Yes, sir.

Q. And these were just like these piled up for other purposes?

A. I do not know; they simply show that they were piled together by the hand of man.

Q. Have you ever seen any miners' monuments in this country?

A. No, sir.

Q. Don't you know the Indians to mark prominent places made piles of stones in the olden times?

A. It may be; yes, sir.

Q. Now, as a matter of fact there were a number of piles of stones there?

A. I am satisfied they were monuments.

Q. Did you see any others that you were not satisfied about?

A. I think we saw perhaps one or two that we did not know what they were for.

Q. You did not consider them unmistakable landmarks?

A. I did not know what else they were put there for.

Q. They were not on your lines?

A. No, sir; there was one of them that was not very far off the line, but it did not look like a very old one either, but did not give the impression of an old landmark.

Q. That was a little off of the line?

A. I do not think it had anything to do with it.

Q. Where is the monument you spoke of in front of the Huachucas, the one which you found?

A. The second one is beyond the river, on the east side of the river.

Q. Did you have pointed out a pile of stones down there?

A. Yes, sir.

Q. They were out to the east of that?

A. Yes, sir.

Q. This monument that was in front of the Huachuca mountains was on the east side of the river?

A. Yes, sir.

PHILIP CONTZEN recalled for the plaintiffs by Mr. Hereford :

76 Q. Did you know Mr. H. G. Howe in his lifetime?

A. I did.

Q. What was his business?

A. Surveyor.

Q. Will you examine the handwriting of that letter and see if it is in Mr. Howe's handwriting?

A. That is his handwriting.

Q. Where did you grow familiar with it?

A. In the U. S. surveyor general's office.

Q. Is Mr. Howe living or dead?

A. To my knowledge he is dead.

We offer in evidence report of H. G. Howe of the San Pedro grant sent to Mr. Hereford (Plaintiff's Exhibit No. 24).

Objection to it as immaterial, incompetent, and irrelevant. It is a private report made to parties in interest and we have had no opportunity to cross-examine him.

Also offer in evidence another report of the San Pedro grant made by Mr. H. G. Howe to Mr. Hereford March 26th, 1896 (Plaintiff's Exhibit No. 25).

Same objections.

Also offer in evidence the deposition of Angel Elias taken in the case of Robert Perrin *et al. vs.* The United States in an Indian depredation claim case (Plaintiff's Exhibit No. 26).

It is agreed that the deposition of Angel Elias used in the Babocomari and San Rafael del Valle cases may be considered in evidence in this case for plaintiffs.

HORACE COBB recalled for the plaintiffs by Mr. Hereford :

Q. Do you know the general character of the land embraced in the San Pedro land grant on either side of the river?

A. Yes, sir.

Q. Just describe it to the court.

77 A. The river valley here proper, the bottom land, is, perhaps, an average of a mile wide; on the east side there is quite a little bluff from 20 to 40 feet high, bank of the mesa land, I suppose you call it, gravelley, with very little grass most of it, and covered, the larger part, with brush; in the middle here piles of stones; there is a little valley in here, probably half a mile out from the bottom, and on the east side are also washes; on the west side there is not much of a bluff or cañon; out towards the Huachuca mountains there is a plain covered with grass all over, and that is the general description of the land.

Q. About where would be the center of the valley be north and south?

A. The river is north towards—on the east side of the valley, especially up here, towards the north and at the north line, and on the south line it is still considerable on the east side of the valley; it is a very wide plain on the west side towards the Huachucas.

Cross-examination by Mr. POPE:

Q. How far is the center monument from the river?

A. In a north direction, about 2 miles, I think; 2 miles west of the river.

Q. How is the country out north?

A. This is level from the river to this center monument and the slope is mostly beyond the monument, but a very gradual slope; it is almost level.

Q. Is this center monument right in the valley of the river?

A. It is not in the bottom lands, but it is the best land in the valley there; the monument is in the center of the best land.

Mr. POPE: We desire to tender in evidence a certified copy of the petition of Jose Maria Elias, Manuel Elias, and Santiago Ainsa, administrator of the estate of Jose Juan Elias, for this tract with sketch map attached (Defendant's Exhibit No. 1).

Also desire to tender in evidence the original expediente from the custody of the treasurer general of the State of Sonora, and also
78 a copy of the same (Defendant's Exhibit No. 2).

Also offer in evidence a translation of this expediente, prepared by the Government (Defendant's Exhibit No. 3).

Objection that it is not a true copy or translation.

Also offer in evidence a certified copy of the expediente of denouncement of the lands known as San Pedro, adjudicated in favor of Jose Maria Elias, Manuel Elias, and the heirs of Jose Juan Elias and others, being the proceedings before federal district judge at Guaymas on the 8th of July, 1880, certified to by the custodian of the archives, with the certificate of the U. S. consul attached, together with the maps thereto attached (Defendant's Exhibit No. 4).

Objection as irrelevant and immaterial in this case.

Also a translation of the same (Defendant's Exhibit No. 5).

The same objection.

Also a certified copy of the proceedings before the federal district judge at Guaymas, initiated by Plutarco Elias for himself and others, dated November 15th, 1880, in a suit begun and terminated on June 6th, 1887, the records being certified to by the custodian of the archives and the certificate of the U. S. consul (Defendant's Exhibit No. 5-1).

The same objection.

Also translation of the same (Defendant's Exhibit No. 6).

Same objection.

HENRY O. FLIPPER, sworn on the part of the Government, testified, upon direct examination by Mr. Pope, as follows :

Q. State your name.

A. Henry O. Flipper.

Q. Your official position ?

79 A. I am at present special agent of the Department of Justice, assigned for duty in the office of the U. S. attorney for the court of private land claims.

Q. What is your profession ?

A. Civil engineer.

Q. How long have you been practicing your profession as civil engineer ?

A. I have been a practicing civil engineer since 1877 ; from 1877 down to the present time.

Q. What as to your knowledge of Spanish ?

A. I am familiar with it ; I began to study Spanish in the U. S. Military Academy in 1873, and from that time I have studied the language ever since.

Q. Where is your home ?

A. At Nogales, Arizona.

Q. Have your business relations with people necessitated a knowledge of Spanish ?

A. Yes, sir ; I was engaged in surveying public lands in the Republic of Mexico from 1882 to 1893, eleven years, which made it necessary for me to understand the language.

Q. You read and write it ?

A. Yes, sir ; read, write, and speak it.

Q. During that time did you have occasion to become acquainted with titles issued under the Mexican government for lands ?

A. Yes, sir ; during that time I have examined expedientes and records at Guaymas, Hermosillo, and Chihuahua ; I have made surveys in 19 of the 20 counties of the State of Chihuahua and in all but 4 counties in the State of Sonora and examined the title papers in all these cases ; the parties were required to present their title papers to us for our examination.

Q. In the course of that employment, did you have occasion to visit the vicinity of what is known and claimed as the San Pedro grant ?

A. Yes, sir ; I spent the month of December, 1886, on the San Pedro grant ; that was my first trip into that country ; I came into Sonora in 1886 ; I came from Chihuahua ; having completed the surveys in Chihuahua, I came over into Sonora in 1886.

80 Q. At that time did you have occasion to call for the titles of the claimants of the San Pedro tract ?

A. Yes, sir ; we summoned Mr. Elias to appear and present his titles and he refused—Jose Maria Elias ; he gave as his reason that there was another company which had the concession to make this survey ; Mr. Bergen, the surveyor for the other company, was there ; the district judge of Arizpe was also there ; the companies having these concessions were required to appear before the district judge at

Guaymas and have their engineers commissioned ; I had complied with that requirement and the other company had not.

Q. You say he did not present his papers on that account?

A. Yes, sir.

Objection to this, as it was subsequent to the date that the title vested in Mr. Elias.

Q. Did you have occasion subsequent to that time to ascertain by record or otherwise as to the boundaries of this tract?

A. Yes, sir ; I personally examined the expediente at Hermosillo and also at Guaymas, which expediente was just tendered in evidence, and I found that the demasias had been denounced, and I got a copy of the expediente of denouncement of the lands of San Pedro and a map thereto attached which has been offered as Defendant's Exhibit No. 4.

Q. This is a certified copy of those proceedings and the map, attached thereto?

A. Yes, sir ; this is a copy of the proceedings, and this last map here is the one of which I got a copy.

Q. These tracts marked Las Nutrias, La Bota, and Terrenate are west of the San Pedro tract, are they?

A. Yes, sir.

Q. This represents the San Pedro tract as shown on this map?

A. Yes, sir ; the second map attached to Defendant's Exhibit No. 4.

Q. Since that time have you had occasion to visit that country or to become acquainted with it?

A. Yes, sir ; I was on the San Pedro grant in April last. Between 1886 and the present time I had occasion to visit there frequently. I went by the custom-house to go through with supplies and teams.

Q. How far is that from Nogales?

A. I think about 60 miles east of Nogales.

Q. Have you had occasion to visit this section of country within the last three months?

A. Yes, sir ; I visited the San Pedro grant in April last.

Q. And for what purpose?

A. For the purpose of making an investigation of the grant.

Q. Did you make an investigation of the grant?

A. I did.

Q. From your residence in Sonora and your visits to that section of country do you know where that place known as San Pedro is—I mean the ranch of San Pedro—the old houses of San Pedro?

A. I know where I have been told they were.

Objection to that as hearsay.

Q. By whom?

A. By the owners. I know them personally—both of the owners, Don Manuel and Jose Maria Elias. The place where they live now and lived in 1886 was the ranch of San Pedro.

Q. And what as to the houses—old houses—of San Pedro, where were they located?

A. They were located at that place.

Q. Since you have known that place have you ever heard of any other place called San Pedro?

A. I have not. It is the only place on the San Pedro river that has that name.

Q. Do you know where Las Nutrias is?

A. I do.

Q. Where is Las Nutrias with respect to the ranch of San Pedro?

A. It is south and west.

82 Q. Where is the present ranch of Las Nutrias with respect to the ruins of the old mission of Las Nutrias?

A. They are right together; the present ranch is below the place of the old ruins.

Q. Are these ruins on the wagon road coming from Santa Cruz to San Pedro?

A. They are.

Q. Who was with you when you passed through?

A. Mr. W. M. Tipton, driver, Mr. Pope, and myself.

Q. And on that investigation did you have with you the expediente to enable you to find this San Pedro tract?

A. I had a copy of the expediente and also an English translation.

Q. With that expediente in your hands and the translation, did you make an examination of this tract?

A. I did.

Q. I wish you would just take this expediente and go to the black-board and show to the court just how this tract according to the expediente is located, in your opinion, laid off, and how it is with respect to that country, and all about it.

Objection to his opinion as to where the grant lies.

A. He says he first caused a monument to be placed at a rectangular corner and from that monument he took the course southwest to northwest. That course is impossible. He says on that course he measured 50 cords, the last of which ended down the river from the house on the edge of the ford on the bank, where he caused a cross monument to be placed; that is a cross monument; that monument is on the edge of the ford of the river and below the houses; the houses would be somewhere like that; as to what house that is, the petition calls for the house of San Pedro, which is the house at the place of San Pedro; he says:

83 "I, said alcalde, in the presence of the promoter fiscal, massurers, appraisers, and recorder, before those in my attendance, Don Manuel Antunes having appeared in person and stated that they could proceed to the survey from the house of San Pedro down the river." Then, he says, there were measured and counted 50 cords, the last of which terminated down the river from the house. Now, the next call, and from there there were measured and counted 50 cords, the last of which terminated in the same valley, at the edge

of a hillock, distant three cords, where I caused a corner monument to be placed. This is the corner monument. Then, he says, from there, from this corner monument, there were measured and counted 50 cords, the last of which terminated in front of the Guachuca mountains, where I had a cross monument placed on a rocky hillock, and from it there were measured and counted fifty cords, the last of which terminated on a chinosa table-land where I had a corner monument placed. Somebody has translated this word to mean brushy; chino is cat's claw, and mesa chinosa is a mesa and has a lot of that brush on it. From this point there were measured and counted 50 cords, the last of which terminated in the canyon of the Bachata, where I had a cross monument placed, a general boundary and dividing rectangular corner, this side line enclosing, and in the figure of a true square, 200 cords, which make 2 and a half leagues; and from there the compass being set up and taking the course northwest to southwest. That course is impossible. He then says there were measured and counted 50 cords, the last of which terminated in the middle of the valley of the San Pedro river, where I had a corner monument placed, and from there, on said course, there were measured and counted 50 cords, the last of which terminated just after crossing the river at the edge of a hillock, where I had a cross monument placed, and from there

84 on the same course, and from it, from the monument, there were measured and counted 50 cords, the last of which terminated in the Arroyo de las Barras, where I had a corner monument placed, and from it, from this monument, there were measured and counted another 50 cords, the last of which terminated in a thicket of dark brush where I had a cross monument placed, and from it, from this monument, there were measured and counted 50 cords, the last of which terminated on the slope of the peak, where I had a monument placed, a general rectangular corner, this measurement enclosing 250 cords, which make $2\frac{1}{2}$ leagues for its side. Then on the next day, the 19th, he says, being in the field, at the monument, this general rectangular corner, and taking the course from northwest to southwest. That is course is impossible. There were measured and counted 50 cords, the last of which terminated in a dense thicket of brush, where I had a cross monument placed, and from it—that is, from this monument—there were measured and counted another 50 cords, the last of which terminated on the Arroyo del Malpais, where I had a corner monument placed, and from it, from this last monument, there were measured and counted 50 cords, the last of which terminated on the rise to a red table-land, where I had a cross monument placed, and from it, from this last monument, there were measured and counted 50 cords, the last of which terminated on the same table-land, where I had a monument placed, a general boundary and dividing rectangular corner. On this line he has only recorded 200 cords, and from it, from this monument, taking the course from southwest to northwest, there were assumed to be enclosed and measured 250 cords, which make $2\frac{1}{2}$ leagues, with which operation there were located, the sides measured, surveyed, and the area determined of four sitios of land. This

85 last course, from southwest to northwest, is impossible. But in the last northwest, leaving out the o, and make it from southwest to northeast, this would be the course; in the second course, leaving out the u in the southwest and make it northeast, would be the course. The three courses are from northwest to southwest. That course is impossible. If you leave out the letter o in the northwest it makes it northeast; it would be from northeast to southwest would be that course.

Q. How do you arrive at that south line?

A. After locating this corner, in order to close this figure, they simply went from one monument to the other.

Q. What does the expediente say?

A. *It says there were assumed to be enclosed and measured 250 cords, which make $2\frac{1}{2}$ leagues, with which operation there were located, the sides measured, surveyed, and the area determined of four sitios of land.*

Q. Now, explain to the court what is meant by cross monument and corner monument.

A. In our system of surveying there is a section corner, and this is a quarter-section corner; in the Mexican system of surveying there is a sitio; this is a cross monument and this is a corner monument, and at every 50 cords there is a cross monument and at 100 cords there is a corner monument; this is a quarter-section corner and this is a cross monument.

Q. Now, you have laid out there a tract of land according to exterior boundaries?

A. Yes, sir.

Q. State whether or not you have examined the expediente in this case as to its being laid out according to a center monument or center point.

A. I have.

86 Q. Is there anywhere in the expediente any reference to a center monument or anything that leads you to believe there was a center monument?

A. There is not a single thing; there is one word here that is misleading the gentleman; the word here is *centruarlos*.

Q. Outside of that word *centruarlos*, have you examined the expediente with a view of determining whether there is any reference to a center?

A. I have; except this there is no reference to it, to a center.

Q. Take that survey as laid down on that and go over it showing just the features with reference to a center monument by reference to the exterior boundaries.

A. In the first place, the starting point is designated as a rectangular corner, general outside corner; then he starts from this point and runs there, that he designates as being a general rectangular corner, and this is on this side line; the word that he used here in that is *caveceado*, completed this side line.

Q. By this side line you mean the line indicated over his first measurement?

A. Yes, sir; that is marked A B; this line is perpendicular to

this line; when he completed that measurement to this point he says this measurement completed 250 cords, which made $2\frac{1}{2}$ leagues on its side or end, which is this line from B to C; now you have two sides that he designates as a general rectangular corner; he then runs this line from C to D, being only 200 cords; then he says this line from D to A back is assumed as being surveyed.

Q. Suppose you start from the center as has been done by Mr. Contzen, in this case would there be any side line?

A. It would not; it would be an interior line.

Q. Suppose you go from a center point down to the exterior corner, would that be a side line?

A. It would not.

Q. When he gets to the point B in making this survey, does
87 he say that he goes back to the center?

A. He does not. This point B is where the Bachata cañon is, and this is in front of the Huachuca mountains.

Q. What is the translation of the Spanish in the expediente as to what he does when he gets to the point B?

A. And from there, the compass being set up and taking the course northwest to southwest, *de ahi* means from there, meaning the point where he was.

Q. When he gets to the point C what is the Spanish used as showing what direction he took; does it or not indicate that he went back to the center monument?

A. He does not go back to the center. He says, being in the field at the monument at the general rectangular corner and taking the course from northwest to southwest, there were measured and counted 50 cords, the last of which terminated in a dense thicket of brush.

Q. Now, at the point D what does he say? Is there any Spanish indicating how he started there?

A. At the point D he says, and from it there were measured and counted 50 cords, the last of which terminated on the rise to a red mesa, where I had a general rectangular corner monument. He says *desde ahi*, from this corner. These lines he assumes here that he measured.

Adjourned until tomorrow at ten o'clock.

JUNE 2ND, 1899—10 a. m.

Mr. POPE:

Q. Mr. Flipper, before leaving the question of the matter of the center point and any statements in the expediente bearing on it, how much is shown in the title papers that this grant was made for—I mean as to quantity?

A. The petition does not appear to state the quantity in so many words. He says here four sitios of land. He asked for the survey, appraisalment, publications, possession, and final sale of the
88 four sitios of land.

Q. Where would four sitios end—a tract of land containing four sitios, two leagues on a side?

A. Starting from the point A, a distance of two leagues would end

at E, and measuring from that point east to the letter F would be two more leagues, and from there to the letter G, and from there to the letter A, the starting point.

Q. Now, will you state to the court what is meant by cross monument and corner monument?

The COURT: I think that is very well understood; he spoke of that yesterday. I understand his meaning perfectly.

Q. Does that word cross monument and corner monument as used there in this expediente indicate from your knowledge of surveying that there was a center point from which these sitios were laid out, from which the whole tract was surveyed?

A. No, sir.

Q. Will you mark out a single sitio?

A. Indicated by these letters E, H, K, and M.

Q. Now, what does the expediente say as to the starting point of this grant, as to natural objects from which it starts?

A. There is nothing mentioned in the survey as to where the start was except the first 50 cords started from a point somewhere the last of which terminated down the river from the house, on the edge of the ford; it seems they intended to start from a certain cienaga.

Q. What does the expediente show as to where that cienaga was with respect to the house of San Pedro?

A. The cienaga was down the San Pedro river from the San Pedro house and was near the junction of Arroyo las Nutrias with the San Pedro river; the junction would be somewhere in that vicinity which I have marked with the letter N.

89 Q. The description is that the tract was near the abandoned place of Las Nutrias?

A. Yes, sir.

Q. Now, take the point A actually on the ground, a point about 2 miles south of the ranch of San Pedro—ranch-house of San Pedro—did you find on the ground there, as a result of your last investigation, anything conforming to these natural objects that you referred to?

A. Yes, sir. Probably $2\frac{1}{2}$ miles up the San Pedro river from the house of San Pedro the Arroyo las Nutrias enters the San Pedro, and near this point of the cienaga.

Q. When you were there, in 1886, was there a cienaga there?

A. Yes, sir.

Q. Where is that with respect to the old place, Las Nutrias?

A. It is east.

Q. How far is that place from the ranch of San Pedro—house of San Pedro?

A. It is between 2 and 3 miles.

Q. Now, starting from the point A and running northwest, would you come to the San Pedro river or any part of it?

A. Yes, sir; you come to the edge of the San Pedro river.

Q. In the vicinity of these houses of San Pedro and below them—that is, down the river from them—are there fords or crosses?

Objection as leading.

The COURT: Well, get along.

Q. Go ahead and describe what you found.

A. Just above the ranch and house there is a crossing on the river, a ford; just below the house there is another ford and probably a mile or $\frac{3}{4}$ down the river from the house there is still another ford. At this ford here, near that hill, the crossing is simply a trail; at the second ford north of the house a wagon road crosses the river.

90 Q. Now take the expediente and translate that where he comes to the edge of the ford.

A. Being at this point, he says: Tomando el rumbo del Surueste al Noroeste se midieron y contaron cinco ta cordeladas que termino la ultima desde la Casa Rio avajo a las Orillas del Bado a la caida donde hize poner Mohonera cruz.

Q. What is the course?

A. From southwest to northwest. There were measured and counted 50 cords, the last of which ended down the river from the house, on the edge of the ford, where I caused a cross monument to be placed.

Q. Is there anything there about rapids in Spanish?

A. Nothing whatsoever.

Q. This Spanish word caida, does that mean rapid?

A. It does not.

Q. What does it mean?

A. It means descent; slope.

Q. Have you ever heard it used meaning rapid?

A. I have not; no, sir.

Q. Or have you ever seen any authority for that use of it in any sense?

A. No, sir.

Q. Now, following along that line, the expediente says: And from it there were measured and counted 50 cords, the last of which terminated in front of the Guachuca mountains—no, going back a little, there were measured and counted 50 cords, the last of which terminated in the same valley, at the edge of a hillock, distant three cords, where I had a corner monument placed. Q. What is the English for loma?

A. A little hill or hillock.

Q. Then the expediente says: Another 50 cords terminated in front of the Guachuca mountains?

A. Yes, sir. The Guachuca mountains lie in a northwesterly direction from that point and run from this point towards the end of the range there.

Q. Does it come to a point?

A. It comes more or less to a point.

91 Q. Does that range run from north to south or from east to west?

A. The general course is from east to west, but it is a very wide range; you can look at the range from several directions and it has the same general appearance.

Q. Now, he says he went on and came to a brushy table-land, cat's claw; do you know whether or not on the west side of the river in that vicinity there is this cat's-claw brush?

A. Yes, sir; there is; that is this point between E and B.

Q. From there there were measured and counted 50 cords, the last of which ended in the Bachata cañon, where I had a cross monument placed, general boundary and dividing rectangular corner: up there in that vicinity which you have indicated by the letter B, is there anything corresponding to this in the way of topography?

A. Yes, sir; there is a cañon here that comes out of the Huachuca mountains, as indicated by these two parallel lines near the point B on this sketch.

Q. How far is that cañon from the ranch-house of San Pedro?

A. I can tell exactly from my notes; I measured it; it is 3.81 miles; that is from the house of San Pedro to this arroyo at the letter B.

Q. Describe that canyon as it appears.

A. It ends in the San Pedro river; it starts up near the international boundary line, which is some two miles further north; it is a very broad cañon and runs back to the Huachuca mountains 8 or 10 miles.

Q. Did you follow up the valley from the point A to the point B?

A. Yes, sir.

Q. Are there any other cienagas along the valley?

A. There are no other cienagas along the road between this
92 cienaga and the international boundary line.

Q. Did you find a monument up there on the side of the cañon?

A. Yes, sir; a pile of stones; I won't say a monument.

Q. What was its appearance?

A. It is a pile of stones with a large base, probably a foot and a half high; the stones are imbedded in the ground; it has been a monument.

Q. Did you go up that cañon any distance?

A. Yes, sir; some 6 or 7 miles.

Q. Were there any bachata there?

A. Yes, sir; that is a brush that grows 7 or 8 feet high; it has a small oval leaf and a purple berry.

Q. Any bachata in that vicinity?

A. Yes, sir, and I gathered some of the berries which were at that time green.

Q. Did you find this point marked B?

A. Yes, sir.

Q. The next course, he says, there were measured and counted 50 cords, the last of which terminated in the middle of the valley of the San Pedro river, where I had a corner monument placed, and from there, on said course, there were measured and counted 50 cords, the last of which terminated just after crossing the river at the edge of a hillock, where I had a cross monument placed; that line run from this letter B at the Bachata cañon eastward would cross the San Pedro river, would it?

A. Yes, sir; this point being west of the river, you would necessarily have to cross the river to get to this point.

Q. It would be where the picacho is?

A. Yes, sir.

Q. What is the picacho?

A. The picacho is a peak of the San Jose mountains, which lie north of east of the house of San Pedro and south of the international boundary line.

Q. Is that about where these San Jose mountains are as indicated on that map?

A. That is correctly indicated on that map; yes, sir.

93 Q. And in going from the Bachata cañon to the slope of the peak you cross the San Pedro river, do you?

A. Yes, sir.

Q. Now, the expediente says, and from it there were measured and counted 50 cords, the last of which terminated in the Arroyo de las Barras, where I had a corner monument placed, and from it there were measured and counted another 50 cords, the last of which terminated in a thicket of dark brush, where I had a cross monument placed, and from it there were measured and counted 50 cords, the last of which terminated on the slope of the peak; did you find any thicket of dark brush?

A. Yes, sir; the mesa is covered with small ones, but after you get up on the mesa it is covered with malpais; from the river to the foot of the mesa it is covered with good grass, and in spots there are thickets; it is a dark brush which belongs to the misquite family; the whole mesa seems to be covered with it.

Q. In that vicinity are there, then, any thickets of dark brush?

A. Yes, sir.

Q. Where does the road from San Pedro to Naco go to with respect to that?

A. It goes down the river and also out in this direction; this line is marked Road to Naco.

Q. Did you go over that road?

A. Yes, sir.

Q. Mr. Contzen, in his testimony, spoke of the Arroyo de las Barras; what does that mean?

A. Switches; it has two or three meanings.

Q. The slope of the peak indicated by the letter C; where does this San Jose peak lie with respect to the international boundary line?

A. The San Jose range lies entirely south of the international boundary line; between this line and the San Jose mountains there is a large mesa over which this road to Naco goes; that mesa is covered with malpais, rocky mesa.

94 Q. What as to the Huachuca mountains; do they extend across the line?

A. The extreme southern end of the Huachuca mountains is in Mexico.

Q. Now, going from the point C, what does the expediente state as to the natural objects encountered?

A. The expediente says: Being in the field at the monument at the general rectangular corner and taking the course from northwest to southwest there were measured and counted 50 cords, the last of which terminated in a dense thicket of brush, where I had a cross monument placed.

Q. Is there any palo prieto out in that section of country?

A. Yes, sir.

Q. What is the next call?

A. The next call is, and from it there were measured and counted another 50 cords, the last of which terminated on the Arroyo del Malpais.

Q. What, if anything, have you to say about that as regards malpais?

A. The mesa is covered with malpais.

Q. Did you find any malpais on the road to Naco?

A. Yes, sir; the mesa is covered with malpais.

Q. Now, go ahead. What is the next natural object you encountered?

A. And from it there were measured and counted another 50 cords, the last of which terminated on the Arroyo del Malpais, where I had a corner monument placed, and from it there were measured and counted 50 cords, the last of which terminated on the rise to a red table-land.

A. Did you see that table-land?

A. I did. The next 50 cords terminated on the same table-land, where I had a monument placed, a general boundary and dividing rectangular corner.

Q. On this trip did you have with you the expediente of denouncement of this tract by the Eliases in Mexico, introduced here as Defendant's Exhibit Number 4?

A. Yes, sir; I had that identical copy. It is a certified copy from the district court at Guaymas, with two maps attached thereto.

Q. Did you make an attempt to locate the old monument at the viejo on the southern line?

Objection.

A. Yes, sir.

Q. Did you locate it?

A. Yes, sir; I made inquiries of the owners of the San Pedro ranch as to where some of the monuments of the grant were and this monument was pointed out to me by Mr. Manuel Elias, one of the owners who lives at the ranch now.

Q. Did you or not find it on the course given in the expediente, the description to identify that monument?

A. Yes, sir; that is the course given here.

Q. Did you locate the natural object that it was on?

A. Yes, sir; I took a bearing on the Trincheras peak.

Q. Where is that with reference to the San Jose peak?

A. To the south of it.

Q. Did you find this monument that was pointed out to you by Mr. Manuel Elias?

A. Yes, sir.

Q. What is the bearing given in the expediente?

A. North 78 degrees east.

Q. You say you took that bearing?

A. Yes, sir; and it agreed with the bearing given in the expediente.

Q. Now, indicate on that map about where that old monument is on the southern line as pointed out to you approximately, viejo, that was pointed out to you and which you identified.

A. It is on the east side of the river, on the summit of a small loma; it is 1.83 miles or south 70 degrees 31 minutes east of the house of San Pedro; of course this is not laid out to a scale; it is in the neighborhood of the place I have marked X; Z is the old house.

96 Q. What is the distance from the old house at Z to the monument at X?

A. It is 1.83 miles; south 70 degrees 31' east, magnetic.

Q. Did you come to the edge of the river at any point on that line?

A. Yes, sir; 1.5 miles north of the monument.

Q. And with respect to the house, south of the house, did you cross the river?

A. It does not cross the river.

Q. Do you encounter the river again going northwest over it?

A. The river was encountered again at a point north 6 degrees 43' west, magnetic; 2.01 miles from the monument at X; the line intersects the river.

Q. How is this old house at Z situated as to elevation with respect to the river?

A. It is on the mesa above the river and near the river.

Q. What is the distance from the point X to international boundary line monument number 98, if you ascertained it?

A. The distance is 8.66 miles.

Q. What is the distance from the point X to the Bachata cañon?

A. The distance is 5.82 miles, the south side of the cañon.

Q. Where is that cañon with respect to the international boundary line?

A. It is south of the international boundary line, and that monument is also south.

Q. Now, this monument at X, where is that with respect to this San Pedro house, how far from is it?

A. It is on the east of the San Pedro house, on the summit of a loma within a $\frac{1}{4}$ of a mile or less than a $\frac{1}{4}$ of a mile from the river.

Q. Where is it with respect to the cienaga that you referred to?

A. Southwest.

97 Q. Standing at that monument and looking up the valley of the Las Nutrias, can you locate the old place of Las Nutrias?

A. I am not sure; my recollection is that you cannot see it.

Q. The courses and distances, then, on this map, are they correct or not?

A. They are correct; yes, sir.

Q. And the natural objects laid down are correctly delineated here, are they or not?

A. They are, according to my observation on the ground.

Q. This point you got marked old monument here, is that the monument testified to at the Bachata cañon, which you found there?

A. Yes, sir; referred to on this sketch map as letter B (Defendant's Exhibit No. 7).

Q. And this point which you got marked south center mon., San Pedro, P. B. Molera survey, where is that with respect to this point?

A. It is the point X on Defendant's Exhibit No. 10.

We offer this map in evidence, made by Mr. Flipper (Defendant's Exhibit No. 7).

Q. Do you know where the tract of land called Terrenate is?

A. I do.

Q. Have you ever had occasion to survey it?

A. I surveyed that tract in 1886.

Q. Is it correctly located on this map?

A. Yes, sir?

Q. This cienaga or marsh that you referred to, is that correctly located on this map?

A. This map shows it just as I recollect it was in 1886.

Q. Now, this Cañon Bachata, as shown on that map, what is your idea as to the location of this cañon in which you found bachata as to the distance of this cañon from the international boundary line?

A. About 2 miles by the scale of this map.

Q. The ranch-houses of San Pedro, are they correctly located on this map?

A. They are correctly located on this map.

Q. Was that same house at San Pedro in the same place it was in in 1886?

A. Yes, sir.

98 Q. What is the place of San Pedro? Just describe it.

A. Why, it is a ranch-house—number of rooms in which the owners and servants live; there is a store there. In 1886 there was a very large number of men in the mines, and a great deal of travel to Tombstone.

Q. Is San Pedro a place that is little known or otherwise in the State of Sonora?

A. It is well known.

Q. Jose and Manuel Elias live at San Pedro?

A. Yes, sir.

Q. Where is Leoncito?

A. It lies southeast of San Pedro.

Q. Where is Alamos?

A. It is in the extreme southeast portion of the State, in the dis-

trict of Alamos; it was at one time the capital of the State; it is referred to now as being the capital; it is a long distance from this.

Q. What does malpais mean?

A. Laid rock, broken rock.

Q. Does it mean bad lands, as has been testified to here? Have you ever heard it applied to bad lands in respect to a country?

A. No, sir; I have not.

Q. Did you find any malpais on the east side of the river, between the points C and D?

Objection—leading.

A. Yes, sir; there is malpais the entire length in every direction for quite a distance.

Q. Did you examine the piles of stones to which testimony has been given? I will get you to state what your observation has been in making surveys in Sonora and Arizona as to there being any number of these piles of stones.

A. I have seen numbers of piles of stones all over that section of country, over the entire north end of Sonora, and surveyed over that country from El Paso to the Colorado river and throughout that entire section of country.

99 Q. And what as to Indian traditions as to these piles of stones?

A. They were places that marked the roads and trails and a certain mystery about some of them; that is the answer they would give me.

Q. We offer in evidence this map in connection with Mr. Flipper's testimony in connection with the topography and natural objects to which he has testified on this map (Defendant's Exhibit No. 8).

Objection to it because it does not show by whom the survey was made, and it has not been shown to be correct, and because it is immaterial and irrelevant in this case.

Cross-examination by Mr. HEREFORD:

Q. Take the expediente and state what the discussion was between Don Manuel Atunes and Don Rafael Salas, and what they finally agreed to do as shown by that expediente.

A. "In the field, place of San Pedro, on the 18th day of the current month and year, I, said alcalde, in the presence of the promotor fiscal, measurers, appraisers and recorder, before those in my attendance, Don Manuel Antunes having appeared in person and stated that they could proceed to the survey from the house of San Pedro down the river without any damage resulting to him in said direction, but going up the river he would be damaged as he considered himself possessed of rights and the lands he has held included in the sitios which he expects from day to day will be adjudicated to him, to which, when stated by said Antunes and noticed by the attorney, Don Rafael Salas, the latter took exception on account of the delay that would result to the prejudice of his

party by depriving him of the benefit of the water produced by the marsh (cienaga) which is the mother of these pastures (ejidos), for which reason the survey in behalf of his principal would be useless; upon which operations Antunes and Salas contended until after being reconciled, to obviate inconveniences, expenses and damages which might result to either of the parties in interest, they yielded and agreed to divide the water of the marsh in halves for the benefit of the farms, being obligated by this same act to preserve harmony, for they obligated themselves, Antunes for himself and Salas in the name of his principal, in testimony of which I entered it as a minute which the promotor fiscal, and other assistants signed with me."

Q. Now, how do you translate that Spanish language as applied to these two men, Antunes and Salas?

A. I contend that the cienaga was divided between Antunes and Salas; it says "they yielded and agreed to divide the water of the marsh in halves;" this letter a in the word marsh (on Def. E. No. 8) is in the middle of the cienaga, according to the agreement I have just read.

Q. What is a cienaga?

A. It is a marsh.

Q. Now, then, according to your contention that monument was located in the marsh?

A. Yes, sir; I know this expediente says a monument was built at that point; whether it was washed away I do not know; there is no monument there now.

Q. How do you translate en el campo?

A. In the field.

Q. What is the meaning of campo?

A. It is country; stretch of country.

Q. Level country?

A. Not necessarily level; it may be level.

Q. What kind of country is there up at the point C which you have marked on this map?

A. It is a mesa.

Q. Would that be called campo?

A. Certainly it is; campo means country regardless of its character; a flat country is campo, but all country that is campo is not necessarily flat.

101 Q. Do you know any word in the dictionary that will give the meaning to the word campo a mesa or lands as described at the foot of a peak?

A. Yes, sir; any tract of country prairie, peak, or mesa as long as it is not water is campo; as long as it is not under water it is campo.

Q. Is there anything in that expediente to distinguish between that campo and other campos?

A. Why, certainly, there is nothing given as far as the language of that expediente is concerned.

Q. Do you find that heading at any other days; do you find it in any other place?

A. Yes, sir; at each one of these days that heading is found; it says being in the field on such and such a date and done in the presence of the other persons; that is the exact translation the American surveyors would use for the word field.

Q. There is a letter from Manuel Antunes; do you find anything about his being in the field; does he date his in the field?

A. He dates his at Terrenate, at home; that is his home, Terrenate, 17th of May, 1821; the place of Terrenate, post.

Q. What do you understand that place of San Pedro is?

A. Where the houses of San Pedro are.

Q. How can you make it at the houses?

A. Well, there is nothing else to call San Pedro at that time; he says, in his petition here, the depopulated place down the San Pedro river, close to the abandoned place of Las Nutrias, be considered as registered.

Q. Does that say anything about houses?

A. It says the depopulated place of San Pedro. It does not; it says the depopulated place of San Pedro.

Q. You have interpreted this monument down here at A as a corner monument?

A. Yes, sir.

102 Q. Give a literal translation, as near as you can, of that monument at A.

A. A rectangular corner monument; the word quadra here is used to distinguish that corner from the other sitios corners; the word quadra designates A, B, C, and D; that word is used to distinguish them from the other corners, like E, M, K, and H; they are simply corners.

Q. Quadra then means the end of a square, does it?

A. The exact definition of the word is a line parallel to a preceding line. The only word that distinguishes it and makes it corner monument is the word quadra.

Q. The word quadra you say that must of necessity be corner?

A. Yes, sir; making a right angle with the preceding measurement; that is the only definition that can be given.

Q. What is the common, ordinary acceptance of the term quadra?

A. That is the only correct meaning of the word.

Q. Would the Mexicans understand that word?

A. That word is very common all over Mexico—that is, where lands are being measured.

Q. That is the technical meaning?

A. Yes, sir; the word is used all over Mexico; I have known them to use it for the last fifteen years; it means a line that is parallel to another line.

Q. It does not mean a square?

A. Technically it does not; a square is a four-sided figure.

Q. Is it not possible to interpret the expediente at the point B to be this: The last 50 cords terminated in the Gulch Bachata where I had a cross monument placed?

A. If anybody can tell you what the word in English would be I will answer the question; it has been incorrectly translated.

Q. It has been incorrectly translated?

A. Yes, sir; how can a square be put down with one line?

103 Q. Will you look and see the age of the officer who was treasurer general of the government?

A. He says he was twenty years of age; was married and a citizen.

Q. You know the word *centrar*?

A. No, sir; I do not know any such word.

Q. The past participle of the very *centrar* would be *cantrado*?

A. Yes, sir.

Q. You are pretty familiar with the Spanish language?

A. Yes, sir.

Q. *Centrar* ought to be a very common word?

A. I never saw it.

Q. Can you find it in any Spanish dictionary?

A. No, sir; I do not remember ever to have seen it.

Q. Leaving out the u in *centruado*, it would be *centrar* or centered?

A. Yes, sir.

Q. If you leave the letter u out of the word *surueste* it would be southeast instead of southwest?

A. Yes, sir.

Q. The direction would be changed then from southwest to southeast?

A. Yes, sir.

Q. You have stated that these lines do not mean headed; that it means to go around the side?

A. Yes, sir; it means this side line here at B.

Q. Don't you think that that word *cavesada* could be used as headed?

A. I do not think it means headed; *esta cavesada* means completed this side line.

Q. It gives here as one of the definitions the part of a piece of ground more elevated than the rest; a side which rises from the river; where the lands are higher than the river. Could that west boundary be derived from this?

A. No, sir; *cavesada* here is a side line; it says this side line.

Q. Starting from the first, he says *y de ahi*. What does that mean?

A. And from that place or from here.

104 Q. *Ahi*, does that ever mean here?

A. Yes, sir.

Q. The next is *y desde ella*?

A. And from it.

Q. From it?

A. Yes, sir.

Q. The next is *y desde ella*?

A. And from it.

Q. The next is *y desde ahi*?

A. And from there.

Q. The next is *y de ahi*?

A. And from there.

Q. The next is y de ahi?

A. And from there.

Q. The next is y desde ella?

A. And from it.

Q. The next is y desde ella?

A. And from there.

Q. The next is y de ahi?

A. And from there.

Q. That closes the first day. The word donde, is that used in any of these places; does the word donde mean from where, from whence?

A. Yes, sir.

Q. These maps which you have introduced here conflict as to the way the river runs, don't they; according to this last map, Defendant's Exhibit No. 4, the San Pedro river seems to run right down through the center of the land grant?

A. It does; it does not touch this corner over here.

Q. It does not touch the south boundary?

A. No, sir.

Q. Then this map is incorrect?

A. It would be well for you to read this and find that the Mexican government rejected that survey.

Q. It did; well, then, that map is no good?

A. That map does not correctly represent it according to this expediente.

Q. Is this map the same thing?

A. That represents it in the same way.

Q. Do these two maps show the grant as confirmed by the Mexican government; does it correctly represent the land grant as confirmed by the Mexican government?

105 A. The Mexican government said that they had no grant; said that there were no boundaries.

Q. Now, on this map they have to run that west boundary from the southeast to the northwest; can you explain that?

A. I can explain exactly how that was done. The first course in the expediente is from southwest to northwest. By changing the u it would be from southwest to northeast, and run the line that way. There is no reason why you could not change that letter.

Q. Can you possibly locate that grant without crossing the river twice, except by running from southwest to northeast?

A. Yes, sir.

Q. How?

A. It would be to shift this corner over and run that line this way.

Q. And then, under those circumstances, how far is the river from that corner?

A. The same distance.

Q. Then it makes no difference about the natural conditions of the grant?

A. No, sir.

Q. Then you don't consider that monument has any bearing on the case?

A. I do not.

Q. You have testified as to there being a monument over here?

A. None whatever. This is an effort to show where this was according to the grant calls in the expediente. The first 50 cords touched the river here immediately below the house. You can locate this point here at the house.

Q. Do you mean to say that this map as drawn is an attempt to show where that grant actually is?

A. No, sir.

Q. Then I think you must run from southwest to northeast.

A. No, sir; that does not follow.

Q. You have not shown where any part of the river runs; will you show it?

A. I have not meandered it; I do not know.

106 Q. It meanders a point 50 cords from the monument?

A. The expediente says it does.

Q. Don't you know whether it does or not?

A. I figure that it is 200 cords from this point marked X to the southwest corner of the grant; the X is the south center monument of the Motera survey.

Q. What is the distance from the Bachata cañon to this point X?

A. It is 5.82 miles.

Q. And what is the distance from the point X to the monument number 98 of the international boundary line?

A. It is 8.66 miles.

Q. And from this Bachata cañon to the international boundary line?

A. It is 2.7 miles.

Q. And from the Bachata cañon to monument 98?

A. It is 2.86 miles.

Q. What would be the location of the south center of the San Pedro grant as marked here with respect to the Huachuca mountains?

A. North 38 degrees west.

Q. Can you draw a line from this south center monument from the southwest corner to the northwest corner and have a monument in front of the Huachuca mountains?

A. Why, certainly you can; yes, sir.

Q. Well, you are a remarkable man.

A. If you are standing on any side of a mountain you are in front of it; all sides of a mountain is the face; every side of a mountain is its face.

Q. Do you mean to say, then, that a monument placed southwest of this mountain would be in front of it?

A. Yes, sir.

Q. Do you mean to say that a monument anywhere around a mountain is in front of it?

A. Yes, sir; on any side of a mountain is in front of it.

Q. Do you know the general valley in and around this swamp you have spoken of?

A. Yes, sir.

107 Q. State what it is.

A. It is low lands ; bottom of the river.

Q. Are there any creeks draining into this marsh ?

A. None except the Arroyo de las Nutrias.

Q. What is the drain of the slope of the country ?

A. Northwest.

Q. The general slope is from the north ?

A. Yes, sir.

Q. Then, if Antunes and Salas had failed to agree upon the division of the water, how could Antunes have got his water ?

A. I do not know unless he could make water run up hill.

Q. Then, if they actually entered into an agreement by which each man took a share of that water, Antunes could not get his water upon his land without carrying it ?

A. There was nothing said about what it was to be used for.

Q. Is this your translation ?

A. Yes, sir.

Q. Do you know any method by which Antunes could have obtained any benefit ?

A. By having an arrangement for raising water.

Q. He would have to raise the water ?

A. Certainly. He says they agreed to divide the water of the marsh in halves for the benefit of the farms.

Q. How were they going to use that water ?

A. I do not know.

Q. Could Antunes have used it by the natural flow ?

A. He may have ; he may have used some.

Q. Is the water in that cienaga lower than the top of the surface ?

A. Yes, sir ; it is more flat than the water that stays on the ground ; that is what makes it a cienaga.

Q. That marsh or cienaga has no outlet ?

A. No, sir ; none ; that is what makes it a cienaga.

Q. Does this Las Nutrias arroyo enter into the San Pedro river ? Does it connect with the marsh ?

108 A. The marsh is on the banks of the river ; on the ground above the channel of the river.

Q. Did you see any monument in the marsh ?

A. No, sir.

Q. If there had been one there it either had sunk or had been taken away ?

A. Yes, sir.

Q. I notice on this line there are six monuments.

A. Yes, sir.

Q. These corners here mark the number of sitios on the line from A to B ?

A. There are 6 monument calls. The first is 50 cords ; the second is 50 cords ; the third is 50 cords ; the fourth is 50 cords, and the

fifth is 50 cords, making 250 cords. Every 50 cords he designates as a cross monument. These are the corners of the 4 sitios.

Q. How many sitios are there from A to M?

A. One. M, E, H, and K is one sitio.

Q. This tract contains more than four sitios, then, on this map?

A. Yes, sir; I am drawing it according to the calls of the expediente.

Q. You say you did not find any monument at the point A?

A. I did not look for any.

Q. Did you find any monument at the point C?

A. I did not.

Q. Did you find any at B?

A. At B we found a monument.

Q. 50 cords east of that did you find any?

A. I did not.

Q. At the next one?

A. I did not.

Q. At the northeast corner?

A. I did not.

Q. Did you find any monuments at any other place?

A. I did not, except at these two places.

Q. And you could not find monuments to satisfy the calls of the expediente on these lines?

A. No, sir.

Q. You stated that from that expediente you could say that this language intended to mean that this grant was laid out with its outside boundaries. Is that what you said?

109 A. Not a particle of doubt about it.

Q. From D to A, have you ever been across that country?

A. I have.

Q. What kind of country is it?

A. The east end there is a mesa country, rolling hills until it gets to the valley of the river, and from about the valley of the river it is bottom land.

Q. Perfectly smooth, even country?

A. Yes, sir.

Q. Don't the expediente say they could not count the cords at the valley of the river because the country was impossible to pass over?

A. The expediente don't say it is impossible; there is not a word in that expediente that can be twisted into impossible; there is not a word that means impossible or that can be twisted into impossible; the language is that there were assumed to be enclosed and measured 250 cords; there is not a word that means impossible or that could be twisted into impossible. As a matter of fact, in surveying this off when they reached this point I think they assumed the rest. I think in the Babocomari case they measured the end lines, but did not measure the side lines.

Q. The first call here began down the river; the second call is in the valley itself; now, how far distant on either side is that monument?

A. The expediente says three cords distance from that loma.

Q. So that this valley itself is over here?

A. No, sir.

Q. What is the character of the country?

A. It is rolling hills.

Q. I believe your map shows you located this international boundary line monument number 98?

A. Yes, sir.

Q. Do you know the distance from international monument 98 to the Huachuca mountains?

A. I do not know; about 9 miles, I should think.

Q. What is the distance from a point directly south of monument number 98 on the south line of the San Pedro grant to the point marked A on your plat that you were examined on this morning, Defendant's Exhibit Number 7?

A. It would be about 9 thousand feet; something like about a mile and a half.

Q. West of the Huachuca mountains are there other mountains?

A. None on that side of the river.

Q. Then, if this map is correct, the south center monument of the San Pedro grant, as shown on this map, is apparently right out in the middle of the valley?

A. It is on one side of the valley, that monument of Mr. Molera, on the east side of the river, less than a quarter of a mile from the river.

Q. Which way does the valley extend at that point from this mesa?

A. Nearly west of that monument.

Q. The valley lies to the west of where you put the San Pedro land grant on this board here?

A. I have not located that point A. I have not told you where that point is; that point X is Mr. Molera's point in that map.

Q. Where would the point A be?

A. I do not know.

Q. Does this map show exactly where the old house is, with respect to the south center monument?

A. Yes, sir.

Q. This point is west of that?

A. Yes, sir; the old house is almost directly north of that point.

Q. Then, the valley is almost nearly west of the old house?

A. Yes, sir; almost entirely west of the old houses; the valley itself is to the west of that.

Q. This house is not in the valley?

A. It is almost on the mesa on the south side of the river.

111 Q. This expediente calls for a monument in the middle of the valley?

A. It does not call for a monument on the river; it calls for a monument just across the river. The monument called for in the valley is this one, the one marked M—that is, this one here, being in the middle of the valley.

Q. From your map it must fall considerable from the southwest to the northeast?

A. That is the general course of the valley.

Q. And the Huachuca mountains run from the southeast to the northwest?

A. Yes, sir.

Q. The river, as you have it here, runs from the northeast to the southwest?

A. It is almost northeast between these two points. I am measuring from the boundary line right here; the general course is almost northeast, and that is the general course of the river all the way down.

Q. As a matter of fact, in locating this grant they have practically located only about one-third of it in the valley and the rest runs over to the foot-hills?

A. No, sir; from this point up here it is in the valley; all the way is the valley up to this point.

Q. Is that considered a valley?

A. Probably three-quarters of the valley.

Q. I am speaking of it at this point here.

A. I do not know how wide it is up here; it must be a valley at least of a mile and a half.

Q. Here is what you call the Cañon Bachata; is that in the valley?

A. That cañon comes—there is practically a valley inside of that cañon; it is hard to explain these things so that you can understand them; this line represents the edge of the loma or mesa that runs this way.

Q. Then your map correctly represents it?

112 A. I have not represented this point as being a corner of this grant; did not pretend to do that, and this is simply an effort to locate the original calls without any reference to their positions on the surface of the earth. I think this Bachata cañon is over two miles and a half from the river; I have just made this to explain what was a cañon and valley and loma; it has nothing to do in the world with that map.

Q. With reference to that monument, where is this map, or plat, or survey, as described in the original grant with regard to its position on the face of the earth?

A. It may be in China or it may be in Sonora. I was asked if this grant could be placed on the San Pedro river; it can be placed there, and I have shown you how. There is a Cañon Bachata out there and on the edge of that cañon there is a monument; but I do not mean to say that this is the monument that is on the edge of that cañon.

Q. How far is this monument here from the monument which you say is on the north bank of the Cañon Bachata?

A. I do not know. I have not said and do not intend to say. The expediente says at the end of that 250 cords there is a monument.

Q. The Cañon Bachata does run down to that monument ?

A. It does.

Q. How much beyond the monument does it run ?

A. I do not know.

Q. You do not know ?

A. No, sir. This is not the monument on the Bachata cañon that I found. I do not pretend to say that these two monuments are the same; this is the monument that the expediente says is on the Bachata cañon. I found the Bachata cañon and I found a monument there. I do not know whether the monument I found is the one described in the expediente or not.

Q. You spoke of malpais ?

A. Yes, sir.

113 Q. Did you find any in the cañon or arroyo there ?

A. There are a number of arroyos there.

Q. Any one in particular called the Arroyo del Malpais ?

A. None in particular.

Q. Was there any in which you found the bush bachata ?

A. Yes, sir.

Q. Was there much of it here ?

A. Several bushes ; yes, sir.

Q. How does that cañon run ?

A. Northwest and southeast ; that cañon runs from the Huachuca mountains southeasterly.

Q. You have not located it on that map ?

A. I have.

Q. Where is it ?

A. Here it is.

Q. You found bachata actually on the ground ?

A. I found bachata on the ground.

Q. Was that directly north of the old houses or northeast or northwest ?

A. It might be said to be north and west because it runs from the Huachuca mountains.

Q. Did you find a monument there ?

A. There was a monument on the mesa on the side of the Bachata cañon.

Q. Which direction is that monument from the old house ?

A. I think it is shown on that map ; this one here.

Q. What is the distance from that monument to the Molera monument ?

A. 5.82. miles

Q. Then as a matter of fact it is a little bit east of north from the old houses ?

A. Yes, sir.

Q. Can you possibly shift that grant so as to make a line fall from the point you call A to the point B run northwest and southeast ; in other words, before you can locate this grant and connect with the monument on the Bachata cañon you would have to find another monument further west, would you not ?

A. Do you mean to say——

114 Q. Can you possibly locate that grant according to the calls of the expediente now in Old Mexico on the San Pedro river?

A. You have not asked me to do that.

Q. I will ask you to do it now.

A. Then you will have to go down and locate it in Old Mexico. I have laid out here the boundaries as described in the original expediente.

Q. I will ask you to draw a map locating this land grant in Old Mexico, if you can.

A. According to the topography of the country down——

Q. How do you know?

A. I have been down there and seen the country. I would go to this point at the corner of this house at Z and run 50 cords, 200 cords, and then run up to B, and then 250 cords to C, and then run 200 cords to D, and then draw this line across here to A. The calls are intelligible and the distances in the original expediente, but there is nothing else to go by; in other words, there are no natural objects to go by. I would use this as the starting point. I would take this point here because it is the only one that fixes anything—at this old house—because it is, beyond any doubt, the old place of San Pedro.

Q. Did you make an effort to locate that grant in Old Mexico?

A. No, sir.

Q. Did you make an effort to locate it in the United States?

A. No, sir.

Redirect examination by Mr. POPE:

Q. You located the cienaga and the Las Nutrias tract when you were on this grant?

A. Yes, sir.

Q. This Las Nutrias, was it the abandoned tract of Las Nutrias?

A. Yes, sir.

Q. The old monuments that you found on the Bachata cañon, where were they with respect to the point B; east or west of it?

115 A. That monument is on the south side, half a mile from the river, or 5.82 miles from this south center monument of the P. B. Molera survey.

Recross-examination by Mr. HEREFORD:

Q. This map that has been introduced here, does it correctly represent the San Jose mountains?

A. Yes, sir; I believe the San Jose mountains are correctly represented on that map.

Q. This tract here marked Las Nutrias that you referred to, about what distance is that from the custom-house marked on this map?

A. It must be 8 miles—between 7 and 8 miles.

Q. Then Las Nutrias is about 7 or 8 miles west of the point you got marked Z on this blackboard?

A. Yes, sir.

GAVINO ARRIGA, sworn on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. How old are you?

A. I am 60 years old.

Q. Where do you live?

A. Santa Cruz.

Q. Do you know where San Pedro is?

A. Yes, sir.

Q. The place where the old custom-house was 8 or 10 years ago?

A. Yes, sir.

Q. How long have you known that country?

A. All my life. I was born there.

Q. How old were you when you were first there?

A. About 15 or 16 years old.

Q. Where was San Pedro then?

A. Where the ranch is at present.

Q. Any house or houses there then?

A. Yes, sir.

Q. What kind of a house?

A. It was a walled house with two or three rooms and small houses for servants.

116 Q. Is that the place where Don Jose Maria Elias and Don Manuel Elias live now?

A. Yes, sir.

Q. Who lived there when you first knew of it?

A. Nobody was living there then.

Q. Nobody living on the ranch?

A. Nobody.

Q. Were there houses then then?

A. Yes, sir.

Q. Who owned the place or claimed the place?

A. At that time nobody claimed it; the Elias now are the owners.

Q. Do you know where Don Rafael Elias lived?

A. Yes, sir.

Q. Where did he live?

A. He lived in Arispe.

Q. Did he ever live in San Pedro?

A. I do not know; but I know that he had lived there as the owner.

Q. At San Pedro?

A. Yes, sir.

Q. This same place where Jose Maria and Manuel Elias live now?

A. The same.

Q. Have you ever heard of any other San Pedro on that river?

A. No, sir.

Q. Have you seen the town or place called San Pedro?

A. No, sir.

Q. Have you ever heard of any other old houses of San Pedro on that river?

A. No, sir.

Q. Do you know where Ochoaville is?

A. That is a new place; there was no place there before.

Q. Is that the same place they call Palominas now?

A. Yes, sir; the same.

Q. Was there any settlement at Ochoaville when you first went over there?

A. No, sir.

Q. Any houses there?

A. No, sir.

Q. Any ruins of houses?

A. No, sir.

117 Q. Were there any ruins of houses at San Pedro river when you first went there besides those at the present San Pedro?

A. No, sir; I do not know any.

Q. Have you ever heard of any cañon on that river called the Bachata cañon?

A. I do not know.

Q. Did you ever know of one that was generally called by that or known by the people of that name?

A. No, sir; it may have been so called, but I have not known it.

Q. Have you ever been to San Bernardino?

A. Yes, sir.

Q. How did the people travel from Santa Cruz up the San Pedro river or Fairbanks?

A. At the present time there are several roads and the people take the road that is the most convenient for them.

Q. Is there much travel up the San Pedro river?

A. Yes, sir.

Cross-examination by Mr. HEREFORD:

Q. Where were you born?

A. I was born at San Mazaro.

Q. What year?

A. I do not remember the year.

Q. About what year?

A. You can calculate my age. I am 60 years and 7 months old.

Q. Do you know what year this is?

A. Yes, sir.

Q. What is it?

A. They say it is '99.

Q. Can you calculate, then, when you were born?

A. You can do that better than I can, but if you cannot I can bring the baptismal record.

Q. Do you read or write?

A. I know the letters.

Q. Do you write?

A. I can sign my name.

Q. How long did you live at the place where you were born before you moved away from there?

A. I lived about 8 years.

Q. Where did you go then?

A. To Santa Cruz.

Q. And how long did you stay at Santa Cruz?

A. To the present date.

118 Q. What was your business in the 8 years before you moved to Santa Cruz?

A. My occupation was to work for my living.

Q. How?

A. In whatever way I could. My parents took care of me until I was able to work.

Q. Did they move with you to Santa Cruz?

A. Yes, sir.

Q. You were 8 years old then?

A. Yes, sir.

Q. What did you do in the next 7 years of your life?

A. Until that time I was living with my parents.

Q. Did you do any work for the next 7 years?

A. Why, certainly I worked for my living.

Q. What kind of work did you do?

A. Whatever I was able to do.

Q. Did you herd cattle or what?

A. There was no cattle then to take care of.

Q. You say there were no cattle?

A. No, sir.

Q. When did you first see cattle down there?

A. When I was 5 or 6 or 7 years old.

Q. I thought you said there were no cattle down there?

A. When?

Q. After you went to Santa Cruz?

A. Yes, sir; when I went to Santa Cruz there were some cattle there. About 2 or 3 or 4 years they were driven away by the Indians; none was left.

Q. Did you herd any cattle at Santa Cruz before they were driven away by the Indians?

A. No, sir.

Q. When did you next see cattle in there?

A. I again saw cattle there when I was over 30 years old.

Q. Between the times you testified there were cattle there and when you were 30 years old were there any cattle there?

A. No, sir.

Q. During that time up to when you were 30 years of age
119 what kind of work did you do?

A. As I have said before, I performed the work that was necessary for my living.

Q. What was that?

A. I would haul wood and hay and also plant the field and whatever became necessary.

Q. Were you also working surveying lands at that time?

A. No, sir; I did not work for other people; I worked for myself.

Q. How did you haul wood; did you have horses?

A. I would carry it even on my head.

Q. Did you have any horses?

A. I have just told you that they were carried away by the Apaches.

Q. Did you ever do any farming on the San Pedro river?

A. No, sir.

Q. Never at any time during your life?

A. Not myself.

Q. After you became 30 years of age did you do any looking after cattle?

A. Do you mean in San Pedro?

Q. Any place?

A. They could not take care of any; there was nothing to take care of.

Q. Did you not say there were some cattle in there about the time you were 30 years of age?

A. That was subsequent to my being 30.

Q. After you became 30 did you ever look after cattle?

A. Not myself.

Q. Did you ever in the San Pedro valley look after cattle?

A. No, sir.

Q. You have always lived in Santa Cruz?

A. Always lived in Santa Cruz.

Q. How far is Santa Cruz valley from the international boundary line?

A. Perhaps it is 3 leagues.

Q. What direction is Santa Cruz from the house you have testified about?

A. I cannot tell you exactly in what direction it is, but it is below.

Q. It is practically south, is it not?

A. I do not know about north, south, east, or west.

Q. What valley is it is—Santa Cruz?

A. In the San Raf-el valley.

120 Q. Has the San Rafael any other name?

A. San Rafael de la Zanja.

Q. Are there any mountains between the Santa Cruz and the house which you call the house of San Pedro?

A. You have first the mountains called Cerro Prieto, and then you have the mountains opposite Terrenate that is called the El Puerto de las Volas.

Q. Do you know where the Huachuca mountains are?

A. Yes, sir.

Q. How far are they away from Santa Cruz?

A. It may be 3 or 4 or 5 leagues; I do not know how far it is.

Q. Do you know anything about the direction as applied to the Huachuca mountains from Santa Cruz?

A. Yes, sir.

Q. What is the direction?

A. It is above the town.

Q. Do you mean north?

A. I say above.

Q. The San Rafael valley is on the west slope of the Huachuca mountains, is it not?

A. It is below as you go down.

Q. On which hand, right or left, are the Huachuca mountains—do you leave the Huachuca mountains to your back?

A. Yes, sir.

Q. Do you know where the Mule mountains are?

A. Yes, sir; at the place where the copper mill is at Bisbee.

Q. As you go down the San Pedro river, on which side, in front or behind you, are the Mule mountains?

A. To the right.

Q. Do you know where the San Jose mountains are?

A. Yes, sir.

Q. Where are they with respect to the Mule mountains?

A. To the right side, going to the Mule mountains, traveling over the road going from San Pedro.

Q. The Indians were very bad in that country until you were 30 or 40 years of age?

A. The Indians were very bad until they were brought to the San Carlos reservation; it is now where the American place is.

121 Q. Can you tell about how many years it is?

A. I cannot, because I do not know.

Q. Were you not able to go out to live in the country then?

A. No, sir; it was not possible.

Q. Did you still stay in the town?

A. Yes, sir.

Q. During the first 30 years of your life, did you have any business that took you outside of the town limits?

A. We had to go out when it was necessary, but the people went in parties, not alone.

Q. Did you go?

A. Yes, sir.

Q. Where did you go to?

A. We used to go everywhere wherever we could.

Q. What did you go for?

A. To look for anything that we needed.

Q. What did you have that you had to look out for?

A. I had even to look for beans.

Q. Did you have to go out to look for your beans?

A. Yes, sir.

Q. Did you find them growing?

A. I planted some.

Q. Where did you find them planted?

A. At the different towns where I went for them.

Q. Did you find them planted on the San Pedro?

A. They did not plant them; there was no people.

Q. Then you never went there?

A. What place?

Q. San Pedro.

A. I did.

Q. What did you go for?

A. We used to go out on scouting expeditions after Apaches.

Q. And at that time you found that nobody was living there in San Pedro?

A. Yes, sir.

Q. How many times did you go out?

A. I do not remember, but it was many times.

Q. What did you go out for if there were no people out there?

122 A. They would take us. I have just said they used to go.

Q. You said there were no cattle in that country from the time you were 8 years old until you were 30 years old?

A. I said, and I will repeat, there were no people.

Q. What did you go out for?

A. I have just said to pursue the Indians that stole property, and we would pursue them.

Q. Then, you went out to pursue the Indians and you found neither people nor cattle out there?

A. Yes, sir.

Q. How old were you the first time you went out?

A. I was about 17 or 18, perhaps.

Q. Did you ever carry a gun?

A. Yes, sir.

Q. Go on horse?

A. On foot; the first time I went I went on foot.

Q. How many times did you go out?

A. I do not remember; perhaps it was more than 50 times.

Q. Now, the only reason you followed the Indians was because they stole something, was it?

A. That was the only reason.

Q. You never went out until the people had fled from this place on account of the Indians, did you?

A. Yes, sir.

Q. Did you ever go to the houses that were below the houses at San Pedro during these times?

A. Yes, sir.

Q. During any of those times was anybody living at that house?

A. No, sir.

Q. Did the houses all fall down?

A. Some of the houses fell down; not all of them; some portions remain standing.

Q. For 30 years?

A. Yes, sir.

Q. When did you first see those houses rebuilt?

A. I do not know when.

Q. You do not remember when it was?

A. No, sir.

123 Q. About how many years?

A. I do not remember.

Q. Was it 5 years ago?

A. It is more.

Q. Ten?

A. About ten. I do not remember.

Q. Might it have been 20?

A. I do not know.

Q. May it have been 50?

A. I say to you that it may have been even a hundred.

Q. Was it the time that Jose Maria Elias rebuilt it?

A. It may have been a 100 years ago. He was the one that rebuilt them, Jose Maria Elias. It may have been a 100 years ago.

Q. It might as well have been 2 years as a 100?

A. Yes.

Q. Then you have no recollection on the subject?

A. No, sir.

Q. If it was told to you by some one back 37 years ago, would it be all right?

A. If that was the time, I would say it was. If I knew, I would tell you now.

Q. If he would say that to you, you would believe it?

A. No, sir; I would not believe if it was not so; but I would if it was so.

Q. Well, suppose he said it was 43 years ago that he went there, would you believe him?

A. If he said that according to data to prove it.

Q. Well, what is the date?

A. I say to you that I do not know; but I might be able to hunt it up for you.

Q. Can you fix it within 20 years?

A. No, sir.

Q. You have been to Ochoaville, have you?

A. Yes, sir.

Q. When did it used to be called Palominas?

A. When the old San Pedro house used to be called San Pedro.

Q. Was it called Palominas?

A. What place?

Q. The old San Pedro.

A. The custom-house was never at Palominas.

Q. When was the custom-house first built at San Pedro?

124 A. I do not remember.

Q. Can you tell within 30 years the time the custom-house was placed there?

A. No, sir.

Q. It has not been 30 years — it was placed there?

A. I do not think so; I do not know; I do not remember when it was placed there.

Q. Could it have been 20 years ago?

A. It might have been 20 years ago; I do not know.

Q. Do you say for certain that it was ten years ago?

A. I can say that it was ten years.

Q. Could you say for certain it was 15?

A. I cannot state that with certainty; I do not remember; I do not know when it was placed there.

Q. When did you first go up to the point to the place known and that you call Palominas?

A. When I first knew the valley of San Pedro.

Q. When was that?

A. I do not know; I do not remember the time.

Q. Was it as much as 20 years ago?

A. Yes; it is more than that.

Q. Was it as much as 30 years or as much as 50 years?

A. No.

Q. Nor 60 years; was it as much as 40 years?

A. Yes, sir.

Q. About 40 years?

A. Yes, sir.

Q. Then the first trips you made out of Santa Cruz you did not go up there after Indians?

A. I did; yes, sir.

Q. Was anybody living there then?

A. No, sir.

Q. Were there any houses there?

A. There were no houses at Palominas.

Q. Well, then, how do you know you went there at Palominas?

A. Because I know where the place is.

Q. What was there to go to this place Palominas?

A. There was a corral.

Q. There was a corral there 40 years ago?

A. Yes, sir.

Q. Did you find any old houses?

A. No, sir.

125 Q. Then 40 years ago, when you were at Palominas, the only things you saw was an old corral?

A. There was a corral.

Q. Did you see anything to indicate that?

A. It was a wall—the wall of the corral.

Q. How, -as it a pretty good corral?

A. Pretty good sized corral.

Q. What had it been used for, if you know?

A. That corral was there for the purpose of branding their cattle at San Pedro.

Q. What was it called at that time, this Palominas?

A. It was called Palominas.

Q. Did you go there on any other trips?

A. Yes, sir.

Q. When was the first time you saw any buildings there?

A. I saw houses there the first time, when Mr. Escobar settled there.

Q. That was in '86, was it not?

A. I do not remember the year.

Q. Was it not about ten years ago?

A. I say that I do not remember.

Q. Could it have been as much as 30 years ago?

A. It may have been a 100; I do not remember.

Q. What is your best recollection as to how long ago it was?

A. I have said that I did not remember.

Q. Then you say that Mr. Escobar put up the first houses that were put up there?

A. Yes, sir.

Q. Did you ever go further north than that on that river?

A. Yes, sir.

Q. How far north did you go?

A. I went as far as Prescott.

Q. Up that San Pedro valley did you find any more houses at any time?

A. Down the valley there were houses at Fort Crittenden.

Q. Was that the only house in that San Pedro valley?

A. It is valley below; it is not up the river.

Q. Are the houses at Crittenden down in that valley?

A. Crittenden is not in that valley.

126 Q. Were there any other houses there in that valley down the river from Palominas?

A. I have said that the first houses that I knew were those that were made at San Pedro at the time when Fort Crittenden was first built or first inhabited; opposite Fairbanks the old walls of the old town of San Pedro are standing.

Q. The old town of Santa Cruz is standing opposite Fairbanks?

A. On the left side of Fairbanks, on the summit of the hill.

Q. Between the old town of Santa Cruz and the house of San Pedro were there any buildings or houses?

A. No, sir; there were no other walls or adobes except at Palominas and the corral of Nogales.

Q. Do you know where the corrals are near Palominas?

A. Going to the place, I can point them out.

Q. Have you ever been there?

A. Yes, sir.

Q. Do you know where the cañon is that runs down from the Mule mountains; do you know a certain cañon there?

A. I do not know them all. I do not know what one you mean.

Q. I mean a cañon with a great deal of bachata in it called Bachata cañon?

A. I know of no other hollow there except that called Morino.

Q. Do you know the Arroyo del Malpais?

A. No, sir.

Q. Do you know any place around that country known as the Arroyo de las Barras?

A. No, sir.

Q. Do you know a big cottonwood tree on the San Pedro river down from Palominas?

A. I do not know if it has fell down; there was one there.

Q. Was any house near there?

A. There was no house near there; there was one constructed there by Jose Maria Elias after he settled the place.

Q. Was that about thirty years ago?

A. I do not remember when, but it was after he settled that he built the house.

127 Q. Did he not, about the same time, build another house at Palominas?

A. I did not see him; I do not know.

Q. Might he not have built it and you not have seen him?

A. Perhaps, because he had a distillery somewhere around.

Q. When you first went to Palominas and saw that corral, was it in that condition?

A. No, sir; it was just about one vara high.

Q. Very old corral then?

A. Yes, sir.

Q. You have known that country ever since you were about 15 years old, have you not?

A. Yes, sir.

Q. Do you know where the picacho is in the San Jose mountains?

A. I do not know which one you mean.

Redirect examination by Mr. POPE:

Q. Do you know where old Las Nutrias is?

A. Yes, sir.

Q. That is on the Las Nutrias valley, is it not?

A. Yes, sir; it is in the valley, in the bottom lands, because it used to be a town.

Q. When you first knew it, were there houses there?

A. Yes, sir; and the ruins are there still.

Q. About how far is that from San Pedro?

A. I think it is a little over 2 leagues.

Q. That cañon that passes by Las Nutrias, where does it empty; into what valley?

A. The San Pedro.

Q. Santa Cruz is on the Santa Cruz river, is it not?

A. No, sir; the river at Santa Cruz is the San Rafael river.

Q. It is the same river that comes down from Nogales, there?

A. No, sir.

Q. Where is the San Pedro valley with respect to the Santa Cruz valley?

Objection as leading.

A. Coming from Santa Cruz to San Pedro, the valley is to the right hand.

128 Q. Going from Santa Cruz to San Pedro, does the road go by Las Nutrias?

A. Yes, sir.

Q. And how long does it take to go from Santa Cruz to San Pedro on horseback?

A. From Santa Cruz it is 12 leagues.

Recross-examination by Mr. HEREFORD :

Q. 12 leagues from Santa Cruz to San Pedro ?

A. That is what people say ; I myself have never surveyed them, but that is what they say.

Q. But that is your statement ?

A. Yes, sir ; that is what I know, what I heard.

Q. Is there any marsh near the old house of San Pedro ?

A. No, sir.

Q. None in the vicinity ?

A. No, sir.

Q. How near to the old house of San Pedro is the nearest cienaga in that country ?

A. I think the nearest is Las Nutrias.

Q. Two or three leagues away, then ?

A. Yes, sir.

Redirect examination by Mr. POPE :

Q. Any cienaga from San Pedro down the river ?

A. Yes, sir ; there are, but quite far.

Q. How far ?

A. There used to be a very large marsh at — ; it was to the left, coming down the river.

Q. That is down below where Fairbanks is ?

A. It is much more below Fairbanks, between Fairbanks and Benson.

Objection to that.

The COURT : Let him rest at that.

Q. Any other cienaga between San Pedro and Fairbanks, any cienaga at all ?

A. There are small marshes at San Pedro and above the dam ; there are no large marshes.

Q. Small marshes ?

A. Yes, sir ; they are small marshes.

Q. Are they right near San Pedro ?

Leading.

129 A. Not near. The nearest small marshes that are in the neighborhood of San Pedro are at a place called San Rafael.

Q. What direction is that ?

A. That is downwards from San Pedro.

Q. How far down ?

A. It is down the river.

Q. Are there any cienagas near Palominas ?

A. I think that these are the little marshes that are nearest Palominas.

Q. What direction are they from Palominas ?

A. I say that they are down the river.

Q. Down the river from Palominas ?

A. Down the river from Palominas.

Q. Do you know any cienagas that are up the river from Palominas at all?

A. There are none up the river from Palominas.

THOMAS A. BARTON, sworn on the part of the Government, testified, upon direct examination by Mr. Pope, as follows :

Q. What is your profession ?

A. I am a practicing attorney here at Tucson.

Q. Have you ever been connected with the surveyor general's office in this Territory ?

A. Yes, sir.

Q. When were you connected with it?

A. I was connected with that office twice, the last time during the years '86 and '7. I had been connected with the office previous.

Q. Did you have occasion, in connection with your employment in the surveyor general's office, to investigate the tract of land claimed as the San Pedro grant ?

A. Yes, sir ; I did.

Q. For what purpose did you go down, and under what instructions ?

A. I went down in January, 1887, under written instructions from the surveyor general, — if the grant could be located. At that time it was claimed to be petitioned for at that time by the claimants of the grant. I think they asked for a survey of the grant.

Q. Was the petition filed by Santiago Ainsa ?

130 A. I think the application was made by Mr. Hereford's father ; I am not sure, but I think it was.

Q. Did you go down for the purpose of investigating this tract ?

A. Yes, sir ; I did.

Q. Did you carry with you the papers bearing on it ?

A. Yes, sir.

Q. What papers did you carry ?

A. I carried, I suppose, a copy of the original expediente on file in the surveyor general's office and a translation I made myself, also a translation of the same made by the translator of the government previous to my employment.

Q. Do you understand Spanish ?

A. Yes, sir ; fairly well.

Q. Did you at that time ?

A. I did.

Q. Did you go down on the ground then with these papers and these instructions ?

A. Yes, sir.

Q. Did you say this was in January, 1887 ?

A. Yes, sir ; I went down to Ochoaville and Palominas, at the ranch of Hall and Ashton.

Q. Did you get them to show you anything connected with the grant ?

A. I did ; called on several gentlemen interested in this grant. I went to the ranch-houses of Whitbert and Robinson ; Mr. Ashton

was also there, and Judge Hereford was there, and Mr. Howe, and a surveyor from Tombstone was there, and the judge of the first instance at Arispe was there, also Mr. Ashton.

Q. How long were you there?

A. I remained at the house thereof—the company's ranch—I think, 5 days.

Q. During that time did you make any request upon them as to pointing out the monuments or boundaries to you?

A. I do not know that I made a request. They all understood what my business was. They undertook to show me one monument.

Q. What one was that?

Objection as incompetent, irrelevant, and immaterial whether they showed him monuments or not.

131 Taken subject to the objection.

A. I was shown a large monument in a western direction from the ranch-house, probably 2 miles and a half. That is the only monument that I saw during my investigation down there; that is the only grant monument that was claimed that was connected with it.

Q. Did they know where that monument was?

A. No; they did not seem to know anything more about it than I did myself. They said that they thought it was one of the monuments of the grant.

Q. How far was that from the ranch-house?

A. I think about $2\frac{1}{2}$ miles or three miles a little south of west.

Q. Did they show you any other monuments?

A. No. They took me to several places where they expected to find monuments, but we found none. They took me to some peaks, traveled from the ranch-house a little southeast towards the San Jose mountains. The title papers called for some monuments on the slope of the peak, and there are three peaks there about the same height and size and distant 500 yards from the San Jose mountains.

Q. Did you find any monuments at this place?

A. No, sir.

Q. What other place did they take you to?

A. Probably 5 or 6 miles to a place where they thought we would find a monument.

Q. How long were you looking there for a monument?

A. Probably $\frac{3}{4}$ of an hour. We found the southwest corner of the San Rafael del Valle grant.

Q. Did you find any monument at the northwest corner of this tract as they claimed it?

A. No, sir; only this post at the southwest corner of the San Rafael del Valle.

Q. How far was that from the river?

A. That post is, I think, probably 4 miles, maybe a little more, west of the river, of the San Pedro river.

Q. Did they take you to any other place?

132 A. Let me see. Yes; the next day we crossed the river and traveled in a northeasterly direction. I was taken to a place across the river, on the east bank of it; there was a few stones *that* on the sand, and they thought that might be one of the old monuments of the grant.

Q. On that trip did you go to any other place under their directions?

A. Well, we would go on five or six trips, and we rode around generally over the grant with the parties—Judge Hereford and this judge from Arispe and Mr. Ashton and other parties and this man, the engineer of the Sonora Land Company. Once we went on horseback. We traveled on the San Pedro river at a distance, I should think, about maybe 2 miles or 3 miles from the ranch-house on the east bank of the river.

Q. Well, after making this reconnoissance for three or four days, did they all go to find any other monuments?

A. Yes, sir; they had the expediente translation the same as I had, and that is the only monument they were able to show me, and they admitted that they themselves did not know of any others at that time.

Objection to all this answer.

Q. Was there any other natural object besides this peak that they were able to show you?

A. This Cañon Bachata, they did not know where it was at that time, and there was nothing down there they did not know at the time.

Q. As a result of your investigation for these four or five days, together with the expediente, what conclusion did you come to as to whether or not this grant was in the United States?

A. I came to the conclusion, and I think so stated in my report to the surveyor general, that it could not be located within the United States—that is, that the tract described in the title papers that I had, according to the calls and otherwise, could not be located within the United States.

133 Q. Did the calls of the expediente fit this Bachata cañon or at least this place that you subsequently claimed was the Bachata cañon?

A. It was named in the expediente, but nobody down there knew anything about it, and I did not know where it was then.

Q. The picacho, is that in the San Jose mountains?

A. Yes, sir; that picacho is on the south side of the river and described in the title papers. My recollection is that the expediente says that they started some place on that line in the northwestern direction. The end of that first measurement terminated at the Cañon Bachata, and from there the expediente says they returned to the starting place; of course, judging from the topography, I do not think that they did anything of the sort.

Q. After that did you go down to Mexico with a view of ascertaining whether the tract could be located?

A. I did go down there to locate the grant in Mexico.

Q. Did you gather further information on the location of the grant?

A. Yes, sir.

Q. Did you secure further information?

A. I did. I called on Don Manuel Elias to find out what he knew about this San Pedro grant.

Q. How far is this place below the international boundary line where he was living?

A. I could not say exactly. I think it is about 8 or 9 miles from the ranch-house where I first stopped, Mr. Elias' house. We did not measure it that I remember of—the exact distance.

Q. Did you ascertain where the old place of San Pedro was?

A. Yes, sir.

Q. Did you ascertain any other place known as San Pedro on the San Pedro river?

A. Mr. Elias said to me that he had heard from his fathers and their fathers that they had owned the land where he was living, and that they called it all San Pedro.

Q. Was any place indicated to you down there as the cienaga, or described to you as the cienaga?

A. Yes, sir; there was.

134 Q. By whom?

A. By the Elias family and by some others—Mexicans. I saw that marshy place myself.

Q. How far is that from San Pedro?

A. Well, I should judge probably a mile or a mile and a quarter of a mile and a half in a southwestern direction from the little settlement of San Pedro.

Q. Describe the principal house at San Pedro.

A. The one where I took dinner was a large one. Mr. Marks runs a store there. It was the principal house there then; that was a pretty good-sized building.

Q. Did you see any large ranch-houses?

A. Yes, sir; that was the house where I took dinner.

Q. I wish you would describe that house.

A. It is a good-sized adobe structure like you see in a good many such places in Mexico or Sonora. There are several rooms for the family and houses for the different employés.

Cross-examination by Mr. HEREFORD:

Q. You made a report of your trip, did you?

A. I did.

Q. Dated January 31st, 1887?

A. Yes, sir.

Q. Is that a copy of your report? (Hands witness paper.)

A. I think so.

Q. That is what you were sent down there for—to make a report?

A. Most certainly.

Q. I presume you reported more freely than you have in mind now.

A. I cannot say as to that.

Q. In other words, you do not know whether you made an adverse report?

A. I most positively know that I did. I say so yet.

Q. And you think the grant at almost any point for a distance of 25 miles on the San Pedro river could be located?

A. You can do that by leaving out the cienaga.

Q. Can you locate it in Old Mexico?

135 A. I think if I had been sent down to Old Mexico with these same title papers that I would have made a different report.

Q. Why do you think that?

A. From what I examined and examinations made since that time, and from other information that I did not have then.

Q. Do you know where the corral is now?

A. I do not know.

Q. Do you know where the lomas or little hills are in the valley—three little hills?

A. I do not know.

Q. Do you know where the mesa is?

A. No, sir.

Q. Do you know where the Cañon Bachata in Sonora is?

A. I think I know where it is. I think the Cañon Bachata is a small cañon running southeasterly direction from the Huachuca mountains.

Q. When did you get that information?

A. About three weeks or a month after I made that report.

Q. Were you still in the employ of the surveyor general's office?

A. I think that the appropriation had run out.

Q. Under these instructions did you look for it in Arizona?

A. No, sir.

Q. You say you found a large monument about 2 miles southwest of Palominas?

A. Yes, sir.

Q. Do you recognize that photograph, whether it looks like that monument?

A. It was a very large pile of stones, my recollection is; a very large monument, but considerably higher than this, that monument was; fully ten or 12 feet through the base and 4 feet high, probably.

Q. Are these the Huachuca mountains over here?

A. Yes, sir; yes, sir. I think that is the monument.

Q. You saw that monument at that time?

A. Yes, sir.

Q. You think you could locate it now?

A. It is a stone monument on the edge of the valley, but according to the expediente I could not locate any monuments.

Q. According to the expediente you could not?

136 A. No, sir; this peak was not located by myself according to the calls of the expediente.

Q. Could you now locate the Arroyo de las Barras?

A. I do not know that I could; that is known by two names.

Q. You read Spanish?

A. A little bit.

Q. Just read the first call and translate it. What does the word campo mean?

A. It means in the field.

Q. Does it mean mesa?

A. It might mean the top of mountains or of the valley.

Q. Where did you get your definition of it, from Mr. Flipper or from the dictionary?

A. I have had experience in translating that word in going through these titles around here, although I have great respect for Mr. Flipper's knowledge of the Spanish language.

Q. What does the word campo mean there?

A. Being in the field, it means here.

Q. Go ahead, read and translate as you go along.

A. How much of this do you want me to read? I will ask the court's indulgence to prepare myself.

Q. I think you can translate it.

A. What is it you want to know?

Q. Read and translate that.

A. How much of it, and commence where—"On the same day, month and year, being in the field and the parties in interest having agreed, in the presence of the promoter fiscal and other assistants, I caused a monument to be placed at a rectangular corner"—

Q. What does he mean by a corner monument?

A. What does he mean? I suppose he means what he says.

Q. Does that mean a corner of a square?

A. He says he built a corner monument.

Q. Is that a square—what does he mean?

A. He mean- the place he placed the monument; the paper says so.

137 Q. According to your interpretation of the expediente he actually put a monument there?

A. No, sir; he made a cross, and this is the place for a monument.

Q. It says that he placed a monument there; then according to the language of the expediente he actually put a monument there, did he not?

A. Yes; the meaning is that he actually put a monument there.

Q. Do you know where that is from the expediente? Do you know where it is? You have stated that you located a monument in Mexico?

A. I did not.

Q. You have said that you could locate it in Mexico?

A. I did not say that I could according to these title papers; I said that I would probably make a different report of the title to this grant. That is what I told you.

Q. Did you ever assist in locating any grant?

A. Yes, sir; I located this grant.

Q. That was a grant which did not have any monuments?

A. Only one or two, I think.

Q. Did you ever locate any other?

A. I have very often attempted to locate others.

Q. Have you made other reports to the surveyor generals on land grants?

A. Yes, sir; I did more or less on every title that has ever been filed in the surveyor general's office of this Territory.

Q. You say that you only found one monument on this trip. Where did you find that monument?

A. Probably 3 miles from the ranch, south and east of the San Pedro ranch, near the cottonwood tree, or maybe 2, right close to the tree.

Q. This was the only monument that you found?

A. Yes, sir.

Q. You spent several days in looking for monuments?

A. Yes, sir.

Q. You said in your report that you had a talk with Don Manuel Elias?

A. Yes, sir.

138 Q. Is he the man who you testified to as having given you information which you have been giving in January, 1887?

A. I think it must have been Don Manuel.

Q. Was he the brother of Don Jose Maria Elias?

A. Yes, sir.

Q. You stated in your report that Don Manuel Elias had only lived there two years, and his brother, Don Jose Maria Elias, about nine years?

A. Yes, sir; I report that.

Q. You say in your report that Dn. Manuel told you that Ochoaville was named Palominas, and the place where he lived San Pedro?

A. Yes, sir.

Q. Did he tell you where the Cañon Bachata was?

A. No, sir; he did not know where the Cañon Bachata was.

Q. Did he state whether he had ever been told?

A. If I say so there, I say so yet.

We offer this report of Thomas A. Borton made to John Hise, surveyor general of Arizona, January 31st, 1887 (Plaintiff's Exhibit No. 27).

Q. You have read the expediente in this case?

A. Yes, sir.

Q. You say this peak is in the San Jose mountains?

A. Yes, sir; I have been there.

Q. Are there any other calls that you know?

A. No, sir.

Q. In riding from this Palominas to these different points, did you go from a center point to the corners, or run around?

A. There was nothing said as to starting from a center, and there is no central point called for in the title papers; I myself went in person to the peak.

Q. Did you travel from the center monument?

A. No, sir.

Q. At that time were there in the office of the surveyor general and given into your possession certain papers and maps showing the location of this grant?

A. No, sir.

Q. Do you know where the Huachuca mountains are?

A. Yes, sir; they are on the west side of the San Pedro
139 valley.

Q. If one call of that expediente calls for a monument in front of the Huachuca mountains, where would you put it?

A. It might be in a great many different places.

Q. Then you would consider a monument in front of a mountain, whether on the side or anywhere in the vicinity of it?

A. It is always in front of it. It is owing altogether — what circumstances which you have in your title papers.

Q. He says here he placed it in front of the Huachuca mountains.

A. If I was writing these field-notes myself I would express it that way.

Q. You said you saw this marsh about a mile from the old house of San Pedro?

A. No, sir.

Q. How do you know it is a marsh?

A. My attention was called to it.

Q. Where this marsh is could a monument be placed in the center of it?

A. Well, that is a difficult question to answer.

Q. Do you think a Mexican surveyor would select that place as a point to build a grant monument of a land grant?

A. I do not think so; not right in the middle. He might build it adjacent thereto.

Mr. POPE: We offer in evidence this map belonging to the surveyor general's report (Defendant's Exhibit No. 9).

Objection to it as incompetent, irrelevant, and immaterial.

Mr. POPE:

Q. Did you hear anything of this large pile of stones that is said to be at the center at that time of this grant?

A. I made inquiries about that monument of different parties, and these parties said that they were satisfied that it was one of the monuments belonging to the grant; no other explanation of it.

WILLIAM M. TIPTON, sworn on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. What is your name and profession?

140 A. My name is William M. Tipton. My present employment is that of special agent of the court of private land claims, being assigned for duty in the office of the U. S. attorney for that court.

Q. Have you any acquaintance with the Spanish language?

A. Yes, sir.

Q. To what extent?

A. To such extent as I have been able to acquire a knowledge of it in the last 23 years.

Mr. HEREFORD: No question is raised as to Mr. Tipton's qualifications as to Spanish.

Mr. POPE: Any question as to his qualifications as a surveyor?

Mr. HEREFORD: No, sir.

Mr. POPE:

Q. Have you had occasion to examine the expediente in the case on trial?

A. Yes, sir.

Q. The original of which has been tendered in evidence now before you?

A. Yes, sir.

Q. Have you examined that portion of the expediente pertaining to the survey of the grant?

A. I have.

Q. Have you been able to find in that expediente anything at all that indicates to your mind that this grant was surveyed from a center point?

A. I have not.

Q. Have you been able to find anything in that expediente which indicates that it was surveyed in a different way?

A. Yes, sir.

Q. In what way?

A. In the first place there is no statement in the expediente that the survey was made from a central point; and in the second place—

Q. In what way does the expediente indicate that the grant was surveyed?

A. The description of the survey shows that the exterior lines of the grant were run, or attempted to be run, and that the
141 form given to the survey was substantially that of a rectangular figure.

Q. Now, I will get you to take the expediente and state your reasons for thinking that the survey was run in that form and in that manner.

A. In describing the first corner that he established and from which he ran his first course, the surveyor says that he established a right-angled corner monument. The Spanish words he used mean that the monument that he established was a monument to mark a point at which two lines were to meet each other at a right angle. From this corner so established he ran a line two hundred and fifty cords in length, having established at the distance of each fifty cords monuments along that line, and at the termination of the two hundred and fifty cords he established another monument to mark a right-angled corner; from that he ran another course a distance of

two hundred and fifty cords and established another right-angled corner; then proceeded with his third course only a distance of two hundred cords, according to the record here, and there established another corner to mark a right angle, and from that point he made no further measurement, but made a statement that two hundred and fifty cords were considered as included and measured from the last corner that he established. The evident intention of the whole expediente is that that completed the figure. Of course there are inconsistencies in it, in that he only ran two hundred cords on the third course, and the figure could not be made complete with a right angle at the last of the corners without assuming that he actually ran two hundred and fifty cords instead of two hundred, as he says. At the end of each one of the lines or courses he describes he starts from the end of that line to run the next course. I do not pretend to be repeating his exact language, but that is substantially what he said, and there is no intimation that he returned to any central point to begin another course.

Q. Is there anything to indicate the contrary?

A. Yes, sir; there is a statement made here in different words, but substantially the same thing, that from the corner just established he ran his next course, so that the figure appears completed by the distance necessary to close the survey from the point from which he again started, which was on an exterior line.

Q. Is there anything in his description of the first line run that indicates the character of the figure made by his survey?

A. The language is very badly expressed there. It is difficult to translate it without translating it freely. After describing the corner which he fixes at the Cañon de la Bachata he says, "this side enclosing, and in the figure of a true square, two hundred cords which make two and a half leagues." He refers to the measurement of the two and a half leagues as being a side, as I understand it.

Q. And how would you translate that of a true square?

A. I do not think that has any sense unless you take it in connection with the intention to run the next line, because it is in the figure of a square—a right angle—but taken in connection with the corner which he established at which a right angle was to be made why, then, there is some sense in the expression.

Q. Would it have any sense if it were to begin back at a center point?

A. No, sir; I should say not.

Q. Down towards the end of the survey, at the close, what is the Spanish showing where he ran from?

A. He says y desde ella.

Q. Y desde ella, what does that mean?

A. It means and from it.

Q. What is the gender of the it there?

A. Feminine.

Q. Has it any antecedent to which it refers?

A. Yes, sir.

143 Q. What is it?

A. The word mohonera.

Q. Where is that mohonera, as shown by this expediente, with respect to the last estimate?

A. At the termination of the third course on the survey, and from the termination of the third course the estimate evidently is made to the first monument which he had constructed.

Q. And the Spanish word cavescados; what does that mean?

A. It means the side lines of the tract were run.

Q. Could that be applied to four lines radiating from a center point as set out in Mr. Contzen's survey here?

A. I think not.

Q. Is there anything else in connection with this survey you desire to throw any light on?

A. I do not think of anything. The principal point in it is that exterior lines were run instead of lines run from a center.

Q. What does the Spanish word caida mean?

A. It means a variety of things.

Q. As used in this expediente; turning back to the first course, I will get you to state what it means.

A. I think it means descent there.

Q. How would you translate the two clauses or phrases at the edge of the ford?

A. At the descent.

Q. Have you ever known it to mean rapids or waterfalls?

A. I never heard it used in that sense.

Q. Were you down on this survey with Mr. Flipper?

A. Yes, sir.

Q. These lines to which Mr. Flipper has testified as having been run, did you assist him in running them?

A. I did.

Q. Did you go to what he has laid down here as the south center monument according to Mr. P. B. Molera's survey?

A. Yes, sir.

Q. Where was that monument found?

A. It was on top of a small hill on the east side of the San
144 Pedro river, and I think a little less than two miles south of the San Pedro ranch.

Q. That would be from the San Pedro ranch-house?

A. Yes, sir.

Q. What is that?

A. It is a large ranch.

Q. Settlements there?

A. A number of houses there; yes, sir. I should think, perhaps, a dozen or perhaps 20 houses. I did not notice particularly.

Q. Did you have that pointed out to you as the old house of San Pedro?

A. Yes, sir.

Q. Describe that as to size.

A. It was a large adobe house of one story. Its dimensions I did not pay particular attention to, but it was a large house, perhaps a hundred feet long north and south and more than that east and

west. On the northeast corner of it there was an old round tower that is often seen in houses of that kind.

Q. What was that for in houses?

A. The only ones I have ever seen were for defense against Indians. There are a great many of these in New Mexico, in the old ranches there.

Q. Did you measure to the international boundary line?

A. We only measured partly, and then completed the survey by triangulation.

Q. You assisted Mr. Flipper all the way through?

A. Yes, sir.

Q. So far as your relations with it, it was correctly done?

A. It was correctly done.

Q. Did you see up towards the northwest a number of cañons from the ranch of San Pedro?

A. Yes, sir; there were a number of cañons up on the west side and on the northwest of the ranch-house.

Q. Up on the mesa there was an old monument?

A. Yes, sir.

Q. Did you go to that monument?

A. Yes, sir.

Q. What kind of a cañon was that as to size?

A. This cañon was the largest one that I saw on the west side of the river northwest of this monument.

145 Q. Where was apparently its source?

A. I think in the southern portion of the Huachuca mountains.

Q. At that point what is the appearance of the Huachuca mountains looking towards the northwest?

A. They are very high and apparently barren mountains, which rise mostly north of the international boundary line, and from that particular point one sees their southern termination and also a large portion of their eastern side, as well as certain peaks, which are very much higher than those in the foreground and which appear to be towards the center of the range.

Q. Is there anything in the proceedings of the survey as to a monument in front of the Huachuca mountains?

A. Yes, sir.

Q. Will you turn to the Spanish and read it?

A. At the termination of the 150 cords from the point where the survey was begun it is stated that the last cord of the preceding 50 terminated in front of the Huachuca mountains.

Q. What would you say as to the monument which you saw at the mouth of this cañon being situated in front of the Huachuca mountains; would you consider it in front of the Huachuca mountains?

A. Yes, sir.

Q. Did you make any observation on the east side of the San Pedro as to the character of the country you passed through?

A. I passed through portions of it and observed other portions from the mesas on the west side of the San Pedro.

Q. What is the character of the country over on the east side as to being malpais or not?

A. Well, there is malpais rock in the immediate vicinity of the San Pedro ranch in the hills near the ranch, and up in towards the San Jose mountains there is a great deal more than there is right at the ranch or in that neighborhood.

Q. How about the north end of the San Jose mountains, along where you go in going to Naco on the wagon road; has it malpais?

146 A. Yes, sir; that whole plain in there for miles is covered with it.

Q. Did you see any evidences of it on the west side of the river?

A. I only recall one place where I did.

Q. Where was that?

A. That was between the ranches of Las Nutrias and San Pedro on some high hills lying south and west of San Pedro; that is the only place I recollect now on the west side.

Q. What as to those lands on the east side of the river with respect to brush or monte?

A. There is a great deal of brush all over the hills that lie to the east of the San Pedro, mezquite and what is called palo prieto, and a smaller brush that is called uña de gato; at least I do not know what it may be called in this country; it is the kind of brush that I have known in New Mexico to go by that name; that is what is known as monte, this brush on the east side of the river; it is not the only kind that is known as monte.

Q. But it is known as monte?

A. Yes, sir.

Cross-examination by Mr. HEREFORD:

Q. What, in your opinion, is the cause of all that number of mistakes and conflict in the survey of that grant as shown in the expediente?

A. Do you mean these inconsistencies?

Q. No; regarding courses and the language generally.

A. Well, I should say the man that attempted to describe these lines here by courses either had no instrument with him or if he did he did not know how to read an instrument. I am rather inclined to think that he did not know how to read an instrument, whether he had one or not.

Q. With the knowledge that those people had of the directions of the compass, would you not think it is somewhat strange that they should speak of the courses in the way they have?

A. I do not think I would; I have seen a great many who did not know the difference between the east and west.

147 Q. Is it not probable in the writing of that survey itself that some clerk who knew nothing except to take down from dictation from some other man wrote it?

A. I do not know whether it is probable or not.

Q. Did you examine the different handwriting between the person who wrote that and the one who signed it?

A. So far as I can express an opinion, without a proper examination, I should say that the body of the description of the survey was not written by any person who signed the proceedings of the survey.

Q. Now the inference would be that the men who signed the proceedings had dictated it to some one else?

A. I do not know whether he dictated it or not.

Q. Under the circumstances, errors of that kind were probably made by the copyist rather than the surveyors, were they not?

A. I do not know about that; they might have been dictated by some one who was himself uneducated.

Q. Could not the language used in that expediente be translated that he commenced at the center of the grant?

A. In my opinion it could not.

Q. Is it not possible that it could be so from the construction of the language?

A. I do not think so.

Q. I call your attention to the fact that at the commencement of the first call a square monument was placed there, does it not?

A. That is not all it states, though.

Q. What else does it state?

A. The language here states substantially that the corner established at that place was a right angle; that is what these words mean, *Mohonera Esquina quadra*.

Q. If, as a matter of fact, there were actually measured from here 250 cords, and this way 250 cords, these lines would form right angles?

Q. If I understand your question they would not form
148 right angles. If the lines represented on this map (Plaintiff's Exhibit No. 28) start from a central point they would not.

Q. Would not that central point be the point at which these lines would form right angles?

A. I do not think it would.

Q. If that grant was correctly surveyed on the theory on which it has been surveyed these lines would meet at right angles?

A. That is wholly imaginary.

Q. You say there must be a corner monument where the lines meet at right angles. If this land grant was correctly surveyed originally in the manner that it has been surveyed upon this map would not these lines meet in right angles, as called for in that expediente?

A. No, sir.

Q. Is not the language used in the third course the same as the language used in the first course?

A. I understand they mean substantially the same thing, but the third course commences at the expiration or end of the second course, rather than from the center monument.

Q. Your theory is that the third course commences or begins at the end of the second course instead of commencing at the center monument?

A. Yes, sir; that is my theory.

Q. Now, if it should be found by applying the theory of Mr. Contzen to this land here that the natural objects upon the land and called for in that expediente could not be located upon this land, would not this language used and intended to describe this land be very poorly expressed?

A. If it was intended to describe that kind of a survey it would not; no, sir.

Q. If you could find absolutely every call in the expediente on the lines as laid out by Mr. Contzen you still would not say that it could not be possible that the original survey was not made from the center?

A. I have already made one answer that it would not be correct.

149 Q. You simply say the language, technically considered, requires the survey to be made around the grant?

A. Yes, sir.

Q. You would have to translate it very freely, to a great extent?

A. I did not make any such statement.

Q. Is that not the fact?

A. No, sir; it is not.

Q. Commencing at the end of the last part of the first course, will you read and interpret that into English—the last part of the first course?

A. "Where I had a cross monument placed, general boundary and dividing rectangular corner, this side line enclosing, and in the figure of a true square, two hundred cords which made two and a half leagues."

Q. What is the word for side?

A. Caveceado.

Q. Is not the general meaning of that headed, in the sense of having a head?

A. I think not.

Q. What other meaning has it?

A. The only one that I recall now, outside of this, is when it is applied to the heavy stroke at the top of the stems of letters that project above the line in old Spanish writing. I have seen it so used.

Q. Did you give that word more leave than the rest—caveceado?

A. I do not remember that I did. We have a word somewhat similar to caveceado in New Mexico—the word *cabezera*, which is used to designate that side of a piece of land which is higher than the stream on which it fronts.

Q. Is it not very possible that in this case there were very many localisms which may have been used in Spanish papers?

A. That is possible in Spanish countries.

Q. In your experience with ignorant people down there would it not be surprising that they had knowledge of that character?

A. I do not think it would.

150 Q. Is it not possible that the word caveceado could mean to place a top or a head to a piece of land?

A. Yes, sir; in the sense that the head meant a side.

Q. Then if in running this line out here to the northeast corner and establishing this side, this head, this top making a line 250 cords in length, could it possibly bear that construction, in your opinion?

A. Not by running a line from the center.

Q. It could not bear that construction?

A. I do not think so.

We offer this map in evidence, made by Philip Contzen (Plaintiff's Exhibit No. 28).

Mr. PORE: We offer in evidence this map, made — Henry O. Flipper (Defendant's Exhibit No. 10).

SANTA FÉ, NEW MEXICO, September 16th, 1899.

I hereby certify that the above and foregoing one hundred and twenty-five (125) pages contain a full, true, and correct transcript of all the testimony offered on the trial of the above-entitled case.

W. J. McPIERSON,
Official Stenographer.

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(PLAINTIFF'S EXHIBIT 1.)

Articles of Incorporation of the Reloj Cattle Company.

Know all men by these presents that we the undersigned have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the Territory of Arizona, and we hereby certify:

First. The name of said corporation is "The Reloj Cattle Company" and its duration shall be fifty years from the execution of this instrument.

Second. The enterprise business and pursuit in which the corporation proposes to engage is buying, selling, breeding, raising and handling cattle, horses and other live stock, and in the purchase and acquisition of proper ranges and water rights for handling, breeding and raising such live stock.

Third. The principal office and place of business of said corporation shall be at Tombstone, Cochise county, Arizona.

Fourth. The amount of the capital stock of this corporation shall be one hundred thousand dollars.

Fifth. Such capital stock shall be divided into one thousand shares; shares of the par value of one hundred dollars each.

In witness whereof we have hereunto set our hands and seals this 24th day of September, A. D. 1885 in triplicate.

J. M. ASTON. [SEAL.]
L. E. GRAY. [SEAL.]
J. M. HALL. [SEAL.]

152 TERRITORY OF ARIZONA, } ss:
County of Cochise, }

On this the 24th day of September, A. D. 1885, personally appeared — me, C. S. Clark, a notary public in and for the said county,
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J. M. Aston, L. E. Gray, & J. M. Hall, each of whom are known to me to be the persons described in and who executed the foregoing instrument, who each acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

Witness my hand and official seal this September 24th, 1885.

C. S. CLARK,

[SEAL.]

Notary Public, Cochise County, Arizona.

(10c. revenue stamp duly cancelled.)

TERRITORY OF ARIZONA, }
County of Cochise, } ss :

I, Frank Hare, county recorder in and for said county, do hereby certify that the above and foregoing is a true copy of the articles of incorporation of the Reloj Cattle Company now on file in my office.

Witness my hand and seal of office this 12th day of May, A. D. 1899.

[Seal of Cochise County Recorder.]

FRANK HARE,

County Recorder.

(Endorsed :) Filed in the office of the clerk, court of private land claims, June 1, 1899. Jas. H. Reeder, clerk, by R. L. Long, deputy.

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(PLAINTIFF'S EXHIBIT 2.)

Vale para el bienio de 1820 y 1821. Rubrica. Sello tercero. Dos reales.

(One stamp and one seal.)

Anos de mil ochocientos catorce y quince. Un sello que dice. Fernando VII. D. G. M. Anos de 1816 y 1817. Otro sello que dice. Fernando VII. D. G. M. Anos de 1818 y 1819. Dos reales. Senor Gobernador Yntendente. Don Jose de Jesus Perez, vecine de esta Capital.

Ante V. S. conforme a derecho y con arreglo a las reales ordenanzas de Campo, leyes, sanciones, y pragmáticas que tratan sobre le realengo y abadengo con que S. M. (D. L. G.) ampara a sus vasallos, como regalia de su real patrimonio, parezco y digo; que en atencion a disputar de algunos bienes castreces y adventicios, sin bener en propiedad un fundo en que uvicarlos y centrarlos ocurro a la Superioridad de V. S. (Previa licencia paterna) para que con arreglo a lo prevenido en las leyes nacionales y dispuesto por real cedula de 14 de Febrero de 1805; sea havido por registrado el par age despollado del rio abajo de San Pedro, sito en esta Provincia rumbo al Norte frontera enemiga inmediato al desam parado de las Nutrias; en cuya virtud protesto entrar en composicion con S. M. (D. L. G.) satisfaciendo la cuato opencion de su fincamiento; el real

derecho de media annata con lo demas que sea necesario, pues asi es de rigurosa justicia con merito a lo puesto. En tal concepto, suplico a V. S. libre comision para que se practiquen las diligencias respectivos de vista de ojos, reconocimiento de terreno, agrimensura, valuo, pregones, posesion y remate de los cuatro sitios que se me mediran en figura cuadrada o cuadrilonga segun la longitud o ampliacion del terreno y su rumbo que en tales terminos. O. V. S. suplico difiera a mi justa solicitud en que recibire gracia, costos protesto y lo necesario, &c.

JOSE DE JESUS PEREZ. [RUBRICA.]

Alamos Marzo 12 de 1821.—Por presenta do y admitido sin perjuicio de tercero. Don Nazario Gomez, procedera a la medida, valuacion y demas diligencias de estilo, citando a los colindantes; y medara cuenta concluidas que sean para lo demas que haya lugar.

CORDERO. [RUBRICA.]

Fronteras 28 de Abril de 1821.—Por recibido del apoderado D. Rafael Salas el antecedente superior decreto de comision en cuya virtud pase por mi el oficio de impartimiento y pase y auxilios necesarios, que debe ampliar el Alcalde Constitucional de este Partido para proceder a la mensura. Don Nazario Gomez, Juez Comisionado a si lo decreta, mande y firme por ante los de mi asistencia segun derecho doy fe.

NAZARIO GOMEZ.

A.: LUCIO GOMEZ.

A.: FULGENCIO FELLES. [RUBRICAS.]

Con fecha 29 del corriente se paso el oficio que se previene en la diligencia que antecede y para constancia puse esta que rubrique—rubrica. En 30 del corriente mes y ano contesto el Alcalde constitucion—al Don Miguel Teran oficio de negativo de los auxilios impartidos por este Juzgado; en cuya virtud atento a pedir la remision de expedientes a su poder en los terminos siguientes (entre otras cosas) dice; espero de Ud me los remitira para dar el debido cumplimiento a los superiores decretos; pues no puedo dar el pase para que estos sean mensurados por otros si no es por mi, quedando por esto obligado a dar mis descargos siempre que por el Superior se me pidan los motivos que tuve para ello los que reservo para entronces con lo que contesto a los cuatro de V. en tal concepto mediante su responsabilidad pasele el presente expediente

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cobrando recibo para el resguardo de este Juzgado y por el presente asi lo decreta y firme segun derecho doy fe.

NAZARIO GOMEZ.

A.: LUCIO GOMEZ.

A.: FULGENCIO FELLES. [RUBRICAS.]

Auto de Obedecimiento.

FRONTERAS 3 de Mayo de 1821.

Por recibido el antecedente superior decreto entregado o este
 154 Juzgado por Don Nazario Gomez, en cuya virtud y habiendoseme presentado la persona de Don Rafael Salas poderante del interesado Don Jose Jesus Perez cuyo poder doy fe. Haber visto; dije se proceda a la agrimensura a cuyo efecto nombrese Promotor fiscal, Ynsptos, medidores, valuadores y ministro apuntador de vientos y como en la persona de Don Lucio Gomez, Don Ramon Benites, Don Teodoro Aros y Don Luis Aragon residen las circunstancias de idoneidad, identidad, partica pericia y conocimiento, he venido en nombrar como nombro al primero de Promotor fiscal, para el reconocimiento de terrenos, vista de ojos y pedimientos a beneficio de Hacienda publica; al segundo y tercero que lo son Benites y Aros para valuadores y al cuato Don Luis Aragon para apuntador de rumbos; en tal consepito notifiquequeses sus encargos para que aceptados se les furamente y divierna y conforme a derecho y con lo que resulte preceder a lo mas que en justicia corresponda.

Yo Don Miguel Teran Alcalde Constitucional de este Partido y Juez Agrimensor en este registro asi lo decrete, ande y firme en la forma ordinaria por derecho doy fe.

MIGUEL TERAN.

JULIAN MONTANO. [RUBRICAS.]

Yncontinenti yo el Juez agrimensor en virtud del auto que antecede, cite y comparecio en este Juzgado la persona de Don Lucio Gomez y en ella le notifique e hice saber el nombramiento de Promotor fiscal de Hacienda publica para la mensura y enterado de todo dijo; lo oye y lo firmo conmigo y los de mi asistencia en la forme ordinaria por derecho doy fe.

MIGUEL TERAN.

LUCIO GOMEZ.

JULIAN MONTANO. [RUBRICAS.]

En seguida estando presente la persona de D. Lucio Gomez Promotor fiscal nombrado le recibi juramento que hizo en toda forma de derecho por Dios Nuestro Senor y una Santa Cruz so cuyo cargo y sus penas ofrecio preceder fiel y legalmente al desempeno de su comision, protestando no defraudar ni consentir lo contrario a los derechos que corresponden a beneficio de Hacienda publica, lo cual ejecutara sindelo, fraude polucion ni engano, en fuero del juramento que fecho biene dijo ser mayor de veinte anos, de estado casado de calidad Ciudadano y lo firma por ante mi y los de mi asistencia segun derecho doy fe.

MIGUEL TERAN.

LUCIO GOMEZ.

JULIAN MONTANO.

Yo el nominado Alcalde y Juez agrimensor, visto la aceptacion y juramento del nombrado Promotor fiscal de Hacienda Publica D.

Lucio Gomez dije la deservia y dicierno el tal cargo y para ello interponia e interpongo mi autoridad y judicial decribo y por ella le dava y doy el poder y facultad cuanto por derecho se requiera necesario sea mas pueda y deva valer para que a nombre de Hacienda publica, haga todos los actos agencias y diligencias que aquella por si hacer deva en la materia y por el presente asi lo decrete, mande y firme en la forma ordinaria doy fe.

MIGUEL TERAN.

De A.: JULIAN MONTANO.

De A.: — — —.

En el mismo dia mes y ano—

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Yo el nominado Alcalde y Juez Agrimensor previa persona liberal del Promotor fiscal nombrado, cite y comparecio ante mi y en este Juzgado las personas nombrados D. Ramon Benites, D. Teodoro Aros y D. Luis Aragon, a quienes de presente les notifique e hice saber el cargo de medidores, valuadores y apuntador de rumbos y cada uno insolidum y de mandomun dijeron; aceptaban y
155 aceptaron el tal encargo y lo firmaron por ante mi el Promotor fiscal y testigos de asistencia con quienes actuo segun derecho doy fe.

MIGUEL TERAN.

LUCIO GOMEZ, P. F.

TEODORE AROS.

RAMON BENITEZ.

LUIS DE ARAGON.

JULIAN MONTANO. [RUBRICAS.]

Sucesivamente previa personalidad del promotor fiscal nombrado y en virtud de la aceptacion hecha por D. Ramon Benitez, D. Teodoro Aros, y D. Luis Aragon en sus personas que doy fe conozco y a cada uno insolidum y demas comun les recibí furamento que hicieron en toda forma de derecho por Dios Nuestro Senor y una Santa Cruz so cuyo cargo y sus penas prometieron proceder fiel y legalmente segun su leal saber y entender en el justifreno del pundo sin que en ello usen de fraude e dolo y en fe de lo cual y observancia del atrivento lo firmaron por ante mi el promotor fiscal y los demi asistencia con quienes actuo en la forma ordinaria por derecho doy fe.

MIGUEL TERAN.

LUCIO GOMEZ, P. F.

RAMON BENITEZ.

LUIS DE ARAGON.

JULIAN MONTANO. [RUBRICAS.]

Vista la aceptacion y firamento hecha por los Ministros avaluadores y apuntador constante en la presente diligencia, dije; les discernia y dicierno el cargo de peritos medidores, avaluadores y apuntador para lo cual interponia e interpongo mi autoridad y judicial decreto *decreto* dandoles como les doy por el presente todo el poder y facultad necesaria para que reconocidos los terrenos suspastos,

montes, aguajes y abrevaderos para que segun sus especies calidad y circunstancias los valuen y justiprecien con la legalidad y escupulosidad que requiere la materia y por el presente asi lo decreto, mande y firme con los de mi asistencia segun derecho doy fe.

MIGUEL TERAN.
TEODORO AROS.

De A.: JULIAN MONTANO.

En tres dias del mes de Mayo Yo el nominado Alcalde y Juez Agrimensor deestas diligencias dije que en atencion a estar concluidas las diligencias de nombramiento de Ministros necesarios a la faccion mediante a no haber colindantes que citar, fijese cartel publico convocatorio a quienes se creyese tener derecho y por el presente hagase entender que para el dia seis del actual en cuyo tiempo se les vira atendera y guarara la justicia que demaden y les asista y por forma ordinaria Doy fe.

MIGUEL TERAN.
JULIAN MONTANO. [RUBRICAS.]

Y continenti se fijo al publico cartel conocatorio que se previene en la diligencia que antecede y para la devida constancia y que obre los efectos que haya lugar en derecho puse esta que rubrique—rubrica—Habiendose citado a Don Manuel Antunes y contestado este con fecha 17 del actual lo que se ve por su oficio que mando se acomule al expediente para que en el obre los efectos que haya lugar en derecho a si mismo esprerese su personalidad para el procedimiento de medidas. Y por el presente asi lo decreto mande y firme segun derecho doy fe.

MIGUEL TERAN.
LUCIO GOMEZ.
JULIAN MONTANO. [RUBRICAS.]

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Contestando al oficio de um de 16 del corriente comparecere personalmente al punto que me cita, sobre las medidas de terrenos
156 que por cuenta de D. Jose de Jesus Perez, se estan ejecutando en el rio de San Pedro; y alli senalare los terrenos que me hayo en disposicion de luego a luego registrar hasta hacer las finales diligencias de composicion con S. M. Yen caso de que dischas medidas comprendan excediendose a los terrenos que sena lare y tengo amparados hace el lespacio de dos anos, con mis ganados en tal caso convenga—Dios guarde a VM muchos anos.

Puesto de Terrenate 17 de Mayo de 1821.

MANUEL ANTUNEZ. [RUBRICA.]

En el campo puesto de San Pedro a los dieziocho dias del corriente mes y ano Yo el nominado Alcalde previa personalidad del promotor fiscal, ministros medidores valuadores y apuntador por ante los de mi asistencia habiendose presentado en persona D. Manuel Antunez y espresado que de la casa de San Pedro no abajo podian proceder a la mensura sin quede alli para dicha ruta le resultase perjuicio pues

subiendose rio arriba era perjudicado por juzgarse poseido de derechos y comprendidos los terrenos que tiene amparados en los sitios que de dia en dia espera se le adjudiquen lo que espuesto por el referido Antunez, y vido por el apoderado D. Rafael Salas ecepciono este la mora a perjuicio que resultaria a su parte de privarle del veneficia de la agua que produce la cienega que es la madre de estos ejidos; sobre lo cual seria inabil la medida a beneficio de su poderdante; sobre cuyas operaciones lidiaron Antunez y Salas hasta que depues de conciliados en obio de tras tornos gastos y perjuicios que a cualquiera de las partes interesados pudiera resultarles cedieron y convinaron en partir la agua de la cienega mitad por medio para el beneficio de las labores quedando por este mismo hacho obligado a la armonia pues asi se comprometen Antunez por si, y Salas a nombre de su poderante en cuyo testimonio lo sente por diligencia que firmaron con migo el Promotor fiscal y demas Ministros por ante los de mi asistencia con quienes actuo en la forma ordinaria a falta de Escribano publico y Real que no le hay en los terminos que el derecho previene que de todo doy fe.

MIGÜEL TERAN.

LUCIO GOMEZ.

RAFAEL SALAS.

RAMON BENITEZ.

TEODORE AROS.

JULIAN MONTANO. [RUBRICAS.]

En el mismo dia mes y ano estando en el campo y habiendo convinado los interesados previa personalidad del Promotor fiscal y demas Ministros hice poner mohonera esquiena cuadra de donde tomado el rumbo del Surueste Al Noroeste se midieron y contaron cincuenta cordeladas que termino la unltima desde la casa rio abajo a las orillas del bado a la caida donde hice poner mohonera cruz y de alli se midieron y contaron cincuenta cordeladas que termino la ultima en el mismo valle a orillas de una loma a distancia de tres cordeles donde hice poner mohonera esquina y desde ella se midieron y contaron cincuenta cordeles que termino la ultima frente la sierra de Guachuca donde hice poner mohonera cruz en una loma pedregosa, y desde el la se midieron y contaron cincuenta cordeles que

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termino el ultimo en una mesa chinosa donde hice poner mohonera esquina y desde alli se midieron y contaron cincuenta cordeles que termino la ultima en la canada de la Bachata donde hice poner mohonera cruz cuadra general concinante y divisoria encerrando este cabecceado y en figura de verdadera cuadra doscientos cordeles que hacen dos y media leguas; y de ahi puesto el abujon y tomando el rumbo del Noroeste al Surueste se midieron y contaron cincuenta cordeles que termino la ultima en medio del valle del rio de San Pedro donde hice poner mohonera esquina y de alli por dicho rumbo se midieron y contaron cincuenta cordeles que termino el ultimo pasado el rio a la orilla de una loma donde hice poner mohonera cruz y desde ella se midieron y contaron cincuenta cordeladas que

termino la ultima en el arroyo de los Baras donde hice poner mohonera esquina y desde ella se midieron y contaron otras cincuenta cordeladas que termino la ultima en un monte prieto donde hice poner mohonera cruz y de alli se midieron y contaron cincuenta cordeladas que termino la ultima a la descolgada del picacho donde

hice poner mohonera esquina cuadra general encerrando esta
157 medida doscientos cincuenta cordeladas que hacen dos y media leguas en su costado con lo que por ser ya tarde se suspendio esta faccion para continuarla el dia siguiente. En cuyo testimonio lo sente por diligencia que firme con el Promotor fiscal Ministros interesada y los de mi asistencia con quienes actuo en la forma ordinaria Doy fe.

MIGUEL TERAN.

LUCIO GOMEZ.

JOSE RAFAEL SALAS.

TEODORO AROS.

RAMON BENITEZ.

JULIAN MONTANO. [RUBRICAS.]

En diezinueve dias del mismo mes y ano previa personalidad del Promotor fiscal y demas. Ministros estando en el campo en la mohonera esquina cuadra general puesto el ahujon y tomado el rumbo del Noroests al Surueste se midieron y contaron cincuenta cordeles que termino el ultimo en un monte espeso donde hice poner mohonera cruz y desde ella se midieron y contaron otras cincuenta cordeladas que termino la ultima en el arroyo del Malpais donde hice poner mohonera esquina y desde ella se midieron y contaron cincuenta cordeles que termino la ultima a la subida de una mesa colorada dondehice poner mohonera cruz y desde ella se midieron y contaron cincuenta cordeles que termino la ultima en la misma mesa donde hice poner mohonera esquina cuadra general confinante y divisoria y desde ella tomando el rumbo del Surueste al Noroeste se dieron por invivitas y medida doscientas cincuenta cordeladas que componen dos y media leguas; con cuya operacion quedan uicados coveceados, medidos y sentrizados cuatro sitios de tierra para ganado mayor sin que resulte perjuicio mediante a la conformidad del cumvecino Y para que los efertos que haya lugar en derecho lo sente por diligencia que firme con el promotor

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fiscal, Ministros, interesado y los de mi asistencia con quienes actuo en la forma ordinaria por derecho. Doy fe.

MIGUEL TERAN.

LUCIO GOMEZ.

JOSE RAFAEL SALAS.

TEODORO AROS.

RAMON BENITEZ.

JULIAN MONTANO. [RUBRICAS.]

San Pedro 21 de Mayo 1821.—Ylallandose concluida esta mensura, dije se preceda al justiprecio y valuo que deben realizan los inspertos

valuadores D. Ramon Benitez y D. Teodoro Aros, previa la aceptacion de su encargoy fecho procedase a lo mas en derecho corresponda Y por el presente asi lo decreto mande y firme en la forma ordinaria. Doy fe.

MIGUEL TERAN.

JULIAN MONTANO. [RUBRICAS.]

Consecuente y en virtud del auto que antecede, previa personalidad del Promotor fiscal nombrado, siendo presentes los Ministros valuadores D. Ramon Benitez y D. Teodoro Aros, en sus personas les notifique que bajo el cargo que aceptado tienen justiprecia y valuen el fundo que comprende esta mensura de lo que enterados dijeron cada uno insolidum y de comun acuerdo que en atencion a la vista de ojos y reconocimiento de terrenos que al tiempo de sus medidas han especceionado los valuan los tres primeros en sesenta pesos cada uno y el otro restante en diez pesos; que este justiprecio segun su leal saber y entender es el justo y legitimo; tanto por la situacion de sus terrenos cuanto por ser comun entrada y salida de los enemigos barbaros comercio e industria y demas artes leberales e industriales. Que esta es la verdad en fe del juramento que fecho tiene Dijo ser de estado casado de edad de veintinueve anos, calidad Ciudadano y lo firmo con migo y los de mi asistencia segun derecho doy fe.

MIGUEL TERAN.

JOSE HOYOS.

A.: RAFAEL YESCAS.

A.: JULIAN MONTANO. [RUBRICAS.]

En Seguida city y comparecio a este Juzgada D. Felix Quijada y en su persona que doy fe conozco le recibi peramentto que hizo previa personalidad del Promotor fiscal, por Dios Neustro Senor y una santa cruz so cuyo cargo prometio decir verdad en cuanto supiere y sea preguntado y siendolo al tenor del antededente interrogatorio, dijo a la primera. Que conoce a D. Jose Jesus Perez y que no le tocan las generales de la ley. A la segundo; que sabe de vidas de que la parte registrante tiene bienes suficientes para poblar y amparar el sitio que se hace mension y responde. A la tercera que son publicas y motorias y de publica voz y fama y como opinion las ventajas que resultan a la Hacienda publica y toda la Nacion, del ampare delos puntos desiertos y despoblados.

Que esta es la verdad en fe del juramento que fecho tiene. Dijo ser de estado soltero de edad de veinticinco anos, de calidad Ciudadano y lo firmo por ante mi y los de mi asistencia segun derecho. Doy fe.

MIGUEL TERAN.

FELIX QUIJADA.

A.: RAFAEL YESCAS.

A.: JULIAN MONTANO. [RUBRICAS.]

En el mismo dia mes y ano cite y comparecio la persona de D. Francisco Ramirez a quien previa personalidad del Promotor fiscal,

le recibí juramento que hizo en toda forma de derecho por Dios Neustro Señor y una Santa Cruz; so cuyo cargo prometió decir verdad en cuanto supiere y sea preguntado y

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siendolo por el tenor del interrogatorio que antecede, dijo;

A la primera; que conoce a D. Jose Jesus Perez y que no le tocan las generales de la ley. A la segunda que de vidas sabe tener bienes suficientes para el ampare y pueble de esta mercedad.

A la tercera; que a toda luz no es desmembrable la ventaja que de su pueble es consiguiente a la Hacienda publica y la Nacion que esta es la verdad segun su juicio. Dijo ser de estado casado de edad de cuarenta anos de calidad Cuidadano y no firmo por no Saber hieclo yo con los de mi asistencia con quienes actuo en la forma ordinaria por derecho. Doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

Ylallandose concluida la informacion que solicita el Promotor fiscal dije; vuelcan al poder del nominado Promotor para que deduzca lo que estime conveniente. Asi lo decreto y firme derecho.

MIGUEL TERAN. [RUBRICA.]

Senor Juez Agrimensor:

D. Lucio Gomez Promotor fiscal nombrado en esta agrimensura dice; que visto el estado del expediente y que de el segun su estado supuesto resulta en beneficio de Hacienda publica y de toda la Nacion el ampare y pueble del sitio de San Pedro; asi es que en obsequio de los derechos de la misma Nacion y para que se finque, adjudique y rematen en el mayor y mejor postor, se servira sacar al pregon por el termino de treinta dias consecutivo el avaluo en que se hayan, admitiendo las posturas, pujas y mejoras que resulten y reservandoles su derecho a salvo para el dia de su fincamiento y remate, que debiera ser en la Capital de Arizpe en junta provincial de real hacienda, precidida por el Senor Gobernador Yntendente de la Provincia, quien prefijara dia al remate y evaciara todo lo mas que por estilo de la practica universal forence por derecho se requiere—Es cuanto tiene que espresar el que suscribe sugetando su juicio a la providad del sabio Gobierno y liberatud del Teniente Letrado de Provincia.

Fronteras 26 de Mayo de 1821.

LUCIO GOMEZ. [RUBRICA.]

Fronteras 27 de — 1821.—Vista la solucion del Promotor fiscal nombrado, dije; se saque al pregon el sitio de San Pedro y su valuo admitiendose las posturas, puja y mejoras que se hagan; y por el presente asi lo decreto mande y firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

159 En el mismo dia mes y ano Yo el Juez agrimensor hice que a son de caja y en altas, claras y legibles voces dijera Lazaro Quijada; se hace publico y notorio como D. Jose Jesus Perez ha registrado el parage de San Pedro y admitida su solicitud se midieron u uvicaron y mercenaron cuatro sitios de tierra para ganado mayor los que se justipreciaron y valloraron en cantidad de ciento y noventa pesos; en cuya virtud todo aquel que se creyese con derecho fundo o quiera hacer postura al terreno que se domina, occura que se le admitira la postura y guardaran sus acciones hasta el dia del fincamiento de remate que sera en Arizpe el dia que designe el Senor Gobernador Yntendente de la Provincia para cuyo efecto le son recabados sus acciones y derechos y no habiendo resultado postor alguno lo sente por diligencia que firme con los de mi asistencia segun derecho doy fe y eneste papel in perjuicio del real haber.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En 28 dias del mismo mes y ano Yo el nominado Alcalde, hice que a son de caja y por voz de pregonero se sacara al publico la merced y valuo del parage de San Pedro, y no habiendo resultado postor, lo sente por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En 29 dias del referido mes Yo el expresado Alcalde hice que a son de caja, y por voz de pregonero, se sacase al publico la merced y valuo del parage de San Pedro, y no habiendo resultada postor lo sente por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En 30 del corriente mes Yo el referido Alcalde hice que a son de caja y por voz de pregonero, se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor lo sente por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANA. [RUBRICAS.]

En 31 dias de dicho mes y ano Yo el mismo Alcalde hice que a son de caja y por voz de pregonero se sacase al publico la merced y valuo del parage San Pedro, y no habiendo resultado postor lo puse por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En el mes de Junio 1 del año de 1821 Yo el Alcalde hice que a son de caja y por voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor lo puse por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En dos dias del mismo mes Yo el nominado Alcalde hice que a son de caja y por voz de pregonero, se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor lo puse por diligencia que firme con los de mi asistencia segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En 3 dias del referido mes Yo el referido Alcalde hice que a son de caja y por voz de pregonero, se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor lo puse por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En 4 dias del mismo mes Yo el referido Alcalde, hice que a son de caja y por voz de pregonero, se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor, lo puse por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En 5 del expresado mes Yo dicho Alcalde hice que a son de caja y por voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor, lo puse por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En seis dias del expresado mes Yo el nominado Alcalde hice que a son de caja y por voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor, lo puse por diligencia.

(One stamp and one seal.)

que firme con los de mi asistencia segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En 7 dias del mismo mes Yo el referido Alcalde hice que a son de caja y por voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor lo sente por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En ocho del expresado mes Yo el mismo Alcalde hice que a son de caja y por voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor lo puse por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En nueve dias de dicho mes Yo el mismo Alcalde hice que a son de caja y por voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor, lo sente por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En diez dias del mismo mes Yo el referido Alcalde hice que a son de caja y por voz de pregonero se sacase al publico la merced y valuo de parage de San Pedro y no habiendo resultado postor lo sente por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

El once dias del expresado mes y ano Yo el Juez agrimensor hice que a son de caja y en altas, claras y legibles voces dijera Lazaro

Quijada; se hace publico y notorio como D. Jose Jesus Perez
161 ha registrado el parage de San Pedro a admitida su solicitud,
se midieron u ubicaron y mercenaron cuatro sitios de tierra para ganado mayor, los que se justipreciaron y valoraron en cantidad de ciento y noventa pesos; en cuya virtud todo aquel que se creyere con derecho fundo, o quisiese hacer postura al terreno que se domina ocurra que se le admitira la postura y guardaran sus acciones hasta el dia del fincamiento de remate que sera en Arizpe el dia que designe el Senor Gobernador Yntendente de la Provincia para cuyo fecho le son reservadas sus acciones y derechos, y no habiendo resultado postor alguno lo sente por diligencia que firme con los de mi asistencia segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En 12 dias del mismo mes en voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no habiendo re-

sultado postor, lo sente por diligencia que firme en toda forma de derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En 13 dias del expresado mes Yo el mismo Alcalde hice que a son de caja y en voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor, lo puse por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En 14 del referido mes Yo el Alcalde hice que a son de caja y en voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no habiendo.

(One stamp and one seal.)

resultado postor lo puse por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En 15 dias del expresado mes Yo el mismo Alcalde hice que a son de caja y en voz de pregonero, se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor lo puse por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En 16 dias del mismo mes Yo el referido Alcalde hice que a son de caja y en voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor, lo sente por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En 17 dias del propio mes ano Yo dicho se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor lo sente por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En 18 dias de dicho mes Yo el mencionado Alcalde hice que en son de caja y en voz de pregonero se sacase al publico la merced y

valuo del parage de San Pedro y no habiendo resultado postor lo sente por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

162 En 19 dias corriente mes. Yo el nominado Alcalde hice que en son de caja y en voz de pregonero, se sacase al publico merced y valuo del parage de San Pedro y no habiendo resultado postor, lo sente por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En 20 dias de dicho mes Yo el referido Alcalde hice que a son de caja y voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor lo sente por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En 21 dias de este mes Yo el expresado Alcalde, hice que a son de caja y voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no haniendo resultado postor lo sente por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En 22 dias del mismo mes Yo el referido Alcalde hice que a son de caja y voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor lo sente por diligencia que firme derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En 23 dias del nominado mes Yo el propio Alcalde hice que a son de caja y voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor lo sente por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En 24 dias de dicho mes Yo el mismo Alcalde hice que a son de caja y en voz de pregonero se sacase al publico la mensura y valuo del parage de San Pedro y no habiendo resultado postor lo sente por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

(One stamp and one seal.)

A.: JULIAN MONTANO. [RUBRICAS.]

En 25 dias del mismo mes Yo el nominado Alcalde hice que a son de caja en voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor lo sente por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [RUBRICAS.]

En 26 dias del corriente mes y ano Yo el Alcalde Constitucional y Juez agrimensor de esta merced, dije; que hallandose evacuadas las diligencias correspondientes a la agrimensura, se remitan a la Superiondad del Sor Gobernador Yntendente, para que su Senora disponga lo que sea de superior agrado Y por el presente asi lo decrete mande y firme por ante los de mi asistencia y en este papel sin perjuicio de haber publico Doy fe.

MIGUEL TERAN.

A.: JOSE HOYOS.

A.: FELIX QUIJADA. [RUBRICAS.]

163 Senor Gobernador Yntendente :

Paso a manos de U. S. las diligencias de medidas, vista de ojos, valuo y pregones practicados en el despoblado sitio de San Pedro a favor de D. Jose Jesus Perez para que U. S. disponga lo que sea de justicia—Dios guarde a V. S. muchos anos.

Fronteras 26 de Junio de 1821.

MIGUEL TERAN.

Sor Gobernador Yntendente D. Antonio Cordero, Arizpe, 9 de Julio de 1821, Al Promotor fiscal.

CORDERO. [RUBRICA.]

Senor Yntendente :

El Promotor fiscal de esta Yntendencia dice; que estas diligencia de mensura, avaluo, informacion de idoneidad y pregones de cuatro sitios de tierra realenga para oria de ganado mayor comprendidos en el parage nombrado San Pedro sito en jurisdiccion del Presidio de Fronteras, justipreciados en cantidad de ciento noventa pesos, a razon de sesenta cada uno de los tres primeros, y de diez pesos el restante; y medidos a favor de su denunciante Don Jose Jesus Perez, vecino de esta Ciudad; estan Practicadas conforme en todo a las reales y superiores disposiciones que hacen regla en la materia Esto supuesto, y atendiendo el merito que de suyo encierra la evacuada solicitud del citado interesado, por ser aquel realengo tanto mas riesgoso del enemigo Apache que hostiliza esta Fronteras, cuanto es muy conveniente y ventajoso el pueblo del mismo pide el defensor fiscal de la Hacienda publica, se sirva Ud si lo tuviese a bien, mandar que con citacion de partes se proceda en esta Capital a la celebracion de las respectivas tres almonedas de estio en solicitud de postores para el remate del expresado terreno mensurado que deba fincar en la ultimar de ellas a favor del mayor y mejor que resulte; hariendose entender a este proceda a enterar en Tesoreria en

valor principal en que se le rematen dichos cuatro sitios, su media Annata y 18 per cent. de concusion; el 2 per cent. mandado exigir; por punto general, y tres pesos para los oficiales agregado a la Cantaduria general de Ejercito, y que visto y aprobado que sea en junta Provincial este expediente, agregandosele la correspondiente certificacion que acredite el citado entero se de cuenta con el mismo a la Superior Hacienda para la resolucion que convenga Este es mi parecer, el cual no se ha despachado hasta hoy del oficio fiscal, por la involuntaria traspapelada que el expediente a ha sufrida en el; mas V sin embargo, resolvera lo que fuere de su mayor ggrado.

Arizpe 25 de Junio de 1822.

FRANCISCO PEREZ. [RUBRICA.]

Arizpe Julio 3 de 1822.—Como parace al promotor fiscal de esta Yntendencia en su antecedente respuesta; procedase a la celebracion de las tres publicas almonedas y remate de las tierras nombradas San Pedro de que tratan estas diligencias con previa citacion del apoderado del interesado Don Jose Ma. Serrano El Senor Yntendente de esta Provincia asi lo decreto, mando y firmo con testigos de asistencia a falta de todo Escribano.

BUSTAMENTE. [RUBRICA.]

A.: JOAQUIN ELIAS GONZALES.

A.: ANTONIO APALATEGUI. [RUBRICAS.]

Yncontinenti siendo presente D. Jose Ma. Serrano se le notificaron el parecer fiscal y auto de conformidad que antecede de que quedo inteligenciado y lo firmo con el Senor Yntendente y testigos de su asistencia.

BUSTAMENTE.

A.: JOAQUIN ELIAS GONZALES.

A.: ANTONIO APALATEGUI. [RUBRICAS.]

1st Almoneda.

En la Ciudad de Arizpe a los trez diaz del mes de Julio de mil cohociientos veintidos; convocados en junta de Almonedas de esta propia Capital el Sor Yntendente, como Presidente y los
164 vocales que la componen a efecto de celebrar la primera de las tierras a que se contra este expediente, hicieron que a son de caja se reuniesen muchos individuos en el oficio de esta Yntendencia y que en su presencia procediese el pregonero Loreto Salcido a dar un pregon como efectivamente lo dio en altas y claras voces diciendo; van a rematarse en esta junta de Almonedas cuatro sitios de tierra realenga para cria de ganado comprendidas en el parage nombrado San Pedro sitios en el particular territorio del presidio de Fronteras mensurados a favor de Don Jose Jesus Perez de esta Ciudad y valuade en la cantidad de ciento noventa pesos a razon de sesenta cada uno de los tres primeros y de diaz pesos el restante; quien quisiera hacer postura al insiduado realengo ocurra a formalizarla ante esta junta donde se le admitira la que con regularidad hiciera; en la inteligencia de que en la tercera y ultima almoneda que ha de

practicarse el día de pasado mañana quedara celebrado el remate en el mayor y mejor postor. Y no habiendo ocurrido ninguno se instruyó por diligencia que firmaron los Sres. Presidente y vocales de esta junta de Almonedas.

BUSTAMANTE.
FUENTES.
ELIAS GONZALES.
PEREZ.

[RUBRICAS.]

2d Almoneda.

En la misma Ciudad a los cuatro días del mes y año espresados; se procedió a la celebracion de la segunda almoneda de este expediente, practicandose en los propios terminos que la primera antecedente con solo la diferencia de decir al publico que mañana quedara celebrado el remate.

Mas no habiendo resultado ningun postor se puso esta diligencia que firmaron los Senores presidente y vocales de esta Junta de Almonedas.

BUSTAMANTE.
FUENTES.
ELIAS GONZALES.
PEREZ.

[RUBRICAS.]

3d Almoneda.

En la Ciudad de Arizpe a los cinco días del mes de Julio de mil ochocientos veintidos convocados en junta de Almonedas de esta propia capital el Señor Yntendente como presidente y los cocales que la componen con objecto de celebrar la tercera y última para el remate de las tierras a que se contraen estas diligencias hicieron que a son de caja y voz de pregonerose reuniesen muchos individuos en el oficio de esta Yntendencia y que en su presencia procediese Loreto Salcido a dar un pregon como efectivamente lo dio igual en todo al que consta de la presedente almoneda, con solo la diferencia de anunciar al publico que ahora mismo a de quedar celebrado el remate en el mayor mejor postor. En cuyo acto comparecio D. Jose Ma. Serrano como apoderado de D. Jose Jesus Perez ofreciendo de nuevo el valordel terreno; y siendo ya dada la plegaria de las doce de este día dijo por ultimo er pregonero, a la una, a las dos, a las tres, que se remata, que se remata, que se remata, que buena, que buena, que buena pro le haga a Dn. Jose Jesus Perez. En tales terminos se concluyo este acto quedando solemnemente rematados a favor de este interesado los cuatro sitios de tierra realenga de que trata este expediente por la cantidad de ciento noventa pesos y para la debida constancia se sento esta diligencia que con el apoderado Don Jose Ma. Serrano firmaron las Senores presidente y vocales de esta junta de Almonedas.

BUSTAMANTE.
FUENTE.
ELIAS GONZALES.
PEREZ.

165 Arizpe 6 de Julio de 1822.—Pase este expediente en traslado con el testimonio autorizado y comprensivo de las superiores determinaciones que rigen en la materia al apoderado Don Jose Ma Serrano para que dentro de tercero dia proceda a exponer en favor de su parte lo que le ocurra en el presente negocio; notificandosele nombre en Mexico un sugeto abonado que la agite en aquella corte.

El Sr. Yntendente interino de esta Provincia, asi lo decreto y firmo con testigos de su asistencia.

BUSTAMANTE.

A.: JOAQUIN ELIAS GONZALES.

A.: ANTONIO APALATEGUI. [RUBRICAS.]

Razon.—En el mismo dia mes y ano se entrego en fojas utiles este expediente y el citado testimonio al expresado apoderado.

[RUBRICA.]

Senor Yntendente :

Don Jose Ma Serrano como apoderado de D. Jesus Perez de esta vecindad, ante Ud parezco y digo; que hago pronta devolucion de este expediente de las tierras nombradas San Pedro y del testimonio con que se me ha corrido en traslado manifestando hallarme conforme con lo actuado hasta su actual estado de remate por estar arreglado en todo a las Superiores disposiciones que gobiernan en la materia y comprende el citado testimonio y solo me resta suplicar a Ud se sirva providenciar la pronta conclusion y curso de este expediente para que obtenida que sea la aprobacion de la Junta Superior de Hacienda se libre a favor de mi parte el correspondiente titulo de merced y confirmacion de los cuatro sitios que contiene el expresado terreno estando pronto a nombrar en Mexico un sugeto abonado y expensado que se encargue de agitar en aquella corte el presente negocio. Por tanto—A Ud pido y suplico se merced mi parte en cuya anima juro no ser de malicia, &c.

JOSE MA. SERRANO. [RUBRICA.]

Auto en vista—En la Ciudad de Arizpe a los seis dias del mes de Julio de mil ochocientos veintidos.

El Senor Yntendente interina de estas Provincias de Sonora y Sinaloa, Ministro Tesorero propietario D. Ygnacio de Bustamante y Velasco, habiendo visto estas diligencias de medidas, avaluo, pregones, almonedas y remate de las tierras nombrados San Pedro mensuradas para cria de ganado mayor y caballada a favor de Don Jose Jesus

(One stamp and one seal.)

Perez vecino de esta Ciudad y citas en el particular territorio de Fronteras, la respuesta dada por su apoderado Don Jose Maria Serrano en el antecedente escrito, con todo lo demas que conste y ver convino, dijo; que declarando como declara por bastantes conformes y arregladas las expresadas diligencias a las superiores disposiciones que rigen en la materia y admitiendo como desde luego admite a composicion con la Hacienda Ymperial al nominado Don Jose Jesus Perez, por el referido realenga, debia mandar y mando se notifique

y hacer saber a su apoderado proceda a enterar en esta tesoreria la cantidad de doscientos ocho pesos un grano en este forma; ciento noventa pesos por el valor principal en que se le remata ron al dicho interesado cuatro sitios que comprende el relacionade terreno once pesos un real ocho granos por el derecho de media annata y su 18 per cent. de conduccion; tres pesos seis reales concí granos respectivos al 2 per cent. mandado exigir por punto general, y los tres pesos restantes por derechos de la contaduria extinguida del mismo ramo, y verificado que sea este entero ponien dose de el la correspondiente certificacion que lo acredite en este expediente se dara cuenta con el mismo o la junta Superior de Hacienda para su aprobacion a la resolucion que convenga. El Senor Yntendente por este auto en vista asi lo proveyo mando y firmo con testigos de asistencia a falta de Escribano.

BUSTAMANTE.

A.: JOAQUIN ELIAS GONZALES.

A.: ANTONIO APALATEGUI. [RUBRICAS.]

166 Yncontinenti siendo presente el apoderado D. Jose Ma Serrano se le notifico el auto que antecede de que querdo inteligenciado y lo firmo con el Senor Yntendente y testigos de asistencia.

BUSTAMANTE.

A.: JOAQUIN ELIAS GONZALES.

A.: ANTONIO APALATEGUI. [RUBRICAS.]

Junta Provincial de la Hacienda Ymperial y Arizpe 7 de Julio de 1822.

Vistos.

Declarase desde luego por legal publica y solemnemente rematados en junta de Almonedas de esta Capital del dia 5 del corriente a favor de D. Jose Jesus Perez de esta vecindad, los cuatro sitios de tierra realenga para cria de ganado mayor que comprende el parage nombrado San Pedro, sito en el particular territorio del presidio de Fronteras por la cantidad de ciento noventa pesos de su justiprecio Y en su consecuencia dese cuenta con este expediente a la Junta Superior de Hacienda para su aprobacion, o la resolucion que convenga, conforme tiene providenciado esta Yntendencia en su antecedente auto.

Asi lo acordaron y firmaron los Senoras presidente vocales de esta junta provisional.

BUSTAMANTE.

FUENTE.

ELIAS GONZALES.

PEREZ. [RUBRICAS.]

Arizpe 7 de Julio de 1822.—Cumplase lo resuelto por la Junta Provincial de Esta Yntendencia en su antecedente acuerdo de hoy.

BUSTAMANTE. [RUBRICA.]

Antonio Carrillo, comisario de la seccion de hacienda de Arizpe en el Estado interno de Sonora—Certifica: que al folio 55 del libro manual de cargo y data del ano de 1822 se halla sentada la partida siguiente.

Julio 8.—Son cargo doscientos ocho pesos un grano que entero en este Tesoreria, a nombre y como apoderado de D. Jose Jesus Perez vecino de esta Ciudad en esta forma; 190 pesos por el valor principal en que se le remataron por esta Yntendencia cuatro sitios de tierra rralengas para cria de ganado mayor comprendidos en el parage nombrado San Pedro, sito en el particular territorio del partido de Fronteras; 11 pesos 1 rs. 8 gs. por el derecho de media anata y su 18 per cent.: 3 pesos 6 rs. 5 gs. por el dos por ciento mandado exigir por punto general; y los 3 pesos restantes por derechos de la centaduria extinguida del propio ramo, segun explica el oficio de la misma Yntendencia que distingue el numero 30.....\$208 0 1

FUENTE.

GONZALES.

JOSE MA. SERRANO.

Y para que conste donde convenga doy la presente por duplicado a pedimento del Sor. Tesorero General del Estado D. Jose Maria Mendoza, en este papel comun por falta del de oficio en Arizpe a veinticinco de Octubre de mil ochocientos treinta y dos.

ANTONIO CARRILLÓ. [RUBRICAS.]

Senor tesorero general:

Ygnacio Perez a nombre de su hermano Jose de Jesus ante V. S. en la mas bastante forma parezco y digo; que por al expediente original que pongo en manos de V. S. tendra la bondad de imponerse que en 5 de Julio de 1822 que rematado a favor de mi citado hermano el terreno nombrado San Pedro, sito en la jurisdiccion de Fronteras, comprensivo de cuatro sitios det tierra; y habiendo permitido

167 por via legal el derecho que a ellos tenia con el Ciudadano

Rafael Elias, y mediante a que aun no se ha expedido el titulo de merced respectivo—A V. S. pido y suplico mandar expedir el correspondiente a favor del expresado Ciudadano Rafael Elias, como actual dueno y propietario del terreno de San Pedro Es gracia que impetro de V. S. jurando no ser de malicia.

Arizpe 25 de Octubre de 1832.

YGNACIO PEREZ. [RUBRICA.]

Arizpe 25 de Octubre de 1832.—Por presentado con el expediente que a compana; dese cuenta con el informe conveniente al Supremo Gobierno del Estado, en cumplimiento de lo prevando en el articulo 28 de la ley no 30 de 20 de Mayo de 1825 para las providencias que correspondan. El tesorero general del estado de Sonora, asi lo proveyo, mando y firmo con testigos de asistencia segun derecho.

MENDOZA.

A.: MARIANO ROMO.

A.: JOSE MA. PEREZ. [RUBRICA.]

Arizpe 31 de Octubre de 1832.—Agreguese a este expediente copia de la consulta hecha al supreme gobierno y la resolucion original de la misma superioridad y expidase en su virtud el correspondiente titulo de merced a favor del Ciudadano Rafael Elias de cuatro sitios de tierra del pursto de San Pedro. El tesorero general del estado asi lo provengo y firmo con testigos de asistencia segun derecho.

MENDOZA.

A.: LUIS CARRANCO.

A.: BARTOLO MIRANDA. [RUBRICAS.]

Tesoreria general del Estado de Sonora.

ECHO SENOR: El Ciudadano Ygnacio Perez de esta vecindad, ha puesto en mis manos con el eserito respectivo, el expediente que tengo el honor de poner en las de V. E., comprensivo de registro, medidas, avaluo, pregones y remate de cuatro sitios de tierra, en el puesto nombrado rio abajo de San Pedro a favor del Ciudadano Jose de Jesus Perez. Justifica por la certificacion que tambien esta agregada al expediente, que pago en la Tesoreria nacional de esta Capital la cantidad de doscientos ocho pesos un grano, por valor principal del terreno y sus respectivos derechos; y pide por ultimo que mediante a haber permutado con el Ciudadano Rafael Elias, se le expido este, el titulo de merced respectivo, compliando a la vez con el arto. 27 de la lay no. 30 de 20 de Mayo de 1825, y esta Tesoreria al dar cuenta a V. E. en observancia del 28 de la misma ley, tiene el honor de manifestarte, que estima por bastante, legal y concluida con las formalidades establecidas por las leyes, el expediente citado y por consecuencia expedito para extenderse el titulo que solicita sin embargo V. E.

(One stamp and one seal.)

tendra la dignacion de resolver lo que fuere de su superior agrado.

Dios y Libertad.

Arizpe 25 de Octubre de 1832.

JOSE MA. MENDOZA.

Echo Senor Gobernador de este Estado.

Es copia.

Arizpe 25 de Octubre de 1832.

MENDOZA. [RUBRICA.]

Un sello que dice—Gobierno del Estado libre de Sonora.

Reconocido el expediente de tierras que V. S. acompaña a su nota de 25 del que fina, comprensivo de cuatro sitios mensurados en el puestro nombrado rio abajo de San Pedro, a favor de Don Jose Jesus Perez, lo devuelvo a V. S. a fin de que expida a Don Rafael Elias el titulo de merced que le corresponde, por permuta que le hizo Don Ygnacio Perez de esta vecindad.

Dios y Libertad.

Arizpe Octubre 31 de 1832.

YGNO. DE BUSTAMANTE.

LUCAS RODRIGUEZ, Ofl. 1st.

[RUBRICA.]
[RUBRICA.]

Senor Tesorero general del Estado.

Agregados el expediente original los preincertos documentos se concluyo este con todos los requisitos y formalidades establecidas por las leyes, quedando custodiado en el archivo de esta Tesoreria general para perpetua constancia— Por tanto; usando de las facultades que me concedin las leyes, por el presente y a nombre del Estado Soberano de Sonora, confiero merced en forma de cuatro sitios de tierra para cria de ganado mayor y caballada que comprende el puesto nombrado de San Pedro, sito en jurisdiccion del presidio de Santa Cruz a favor del Ciudadano Rafael Elias a quien concedo doy y adjudico dichas tierras por via de venta, y con las calidades, firmeza y subsistencia que establecen las leyes, para si, sus hijos, herederos y sucesores, con todas sus entradas, salidas, usos, costumbres, maderas, montes, pastos, aguas, aguajes, abrevaderos y demas que le correspondan con la precisa calidad y terminante condicion que han de montener poblados y ampara dos dichos terrenos, sin que esten desamparados, desiertos ni despoblados por tiempo alguno, bajo el aperebimiento de que si se verificase su total abandono por espacio de tres anos consecutivos y hubiese alguna persona que los denunciase, en tal evento, con previa calificacion del hecho, se declararan por baldios, y se adjudicaran de nuevo a favor del mejor poster, eceptuandose como es justo aquellos casos en que el desamparo sea por causa de notorias invaciones de enemigos, y por solo el periodo de semejantes acontecimientos. Previniendose como estrechamente se preveine al Ciudadano Rafael Elias, asi como a sus sucesores que habian de sugetarse y limitar se al terreno, pertenencias, termino y linderos senalados individualmente en las preincertas diligencias de medidas; observando y dando su exacto cumplimiento al arto. 30 de la ley no 30 de 20 de Mayo de 1825, que les impone la obligacion de mantener en sus terminos linderos mohoneras de cal y canto, bajo lo multa de veinti cinco pesos, que se les exigiran si contravienesen para los ponders del comun, construyendose en este caso por el respectivo Juez las expresadas mohoneras de cuenta de los interesados. Y ordeno y mando a los Jueces, Justicias y autoridades locales que al presente son y en adelante fueron del partido de esta Capital, que en obsequio de la buena y pronta administracion de justicia, y en cumplimiento de las leyes de la materia, no permitan que el referido interezado ni sus sucesores sean de ninguna manera perturbados, inquietados ni molestados en el libre uso ejercicio, propiedad, dominio y posesion de los mencionados cuatro sitios de tierra, que comprende el puesto nombrado San Pedro; antes si celaran y cuidaran constantemente con la mayor vigilancia y actividad, que sean amparados y mantenidos siempre en la quieta y pacifica posesion que les corresponde con legitimo derecho para que de este modo puedan libremente vender, cambiar, permutar, donar, traspasar, ceder y enagenar dichas tierras a su arbitrio y libre eleccion como duenos propietarios absolutos. En cuyos terminos expedi el presente titulo de merced en forma a favor del Ciudadano Rafael Elias y a sus hijos, herederos y sucesores entregandoseles para su resguardo con previa toma de razon en el cor-

respondiente libro. Dado en la capital de Arizpe a los ochodias del mes de Mayo de mil ochocientos treinta y tres, autorizado y firmado por mi sellado con el sello de esta Tesoreria general por ante los infrascritos testigos de mi asistencia a falta de Escribano que no lo hay segun derecho.

JOSE MARIA MENDOZA.

A.: MARIANO ROMO.

A.: LUIS CARRANCO. [RUBRICAS.]

Un sello—Tesoreria general del Estado libre de Sonora.

169 Queda tomada razon de este titulo en el correspondiente libro que existe en esta tesoreria general al folio 12—una rubrica.

JOSE MARIA MENDOZA,
Tesoreria General del Estado de Sonora.

Certifico; que al folio 34 del libro manual del corriente ano, se halla sentada la partida siguiente.

May 8.—Cargo en titulos de merced de terrenos treinta pesos enterados por el Ciudadano Rafael Zubia a nombre del Ciudadano Rafael Elias vecino de esta capital por el valor del titulo de merced en forma expedido por esta Tesoreria general el dia hoy a favor del expresado Elias de cuatro sitios de tierra para cria de ganado mayor y caballada que comprende el puesto nombrado San Pedro en jurisdiccion del presidio de Santa Cruz; y de este entrego se expedio la conveniente certificacion \$30.00.

MENDOZA.
MILLA.
RAFAEL ZUBIA.

Y para que conste donde convenga doy lay presente en Arizpe a ocho de Mayo de mil ochocientos treinta y tres.

JOSE MARIA MENDOZA.

Es copia.

Ures de 1855.—Concuerta con su original del que esta fielmente sacada corregido y concertado en el sello que corresponde, en ocho fojas utiles, hoy nueve de Julio de mil ochocientos cincuenta y cinco. Lo que para constancia autorizo y firmo con los de mi asistencia.

JOSE BUSTAMENTE.

A.: J. ESTRELLA CORDOVA.

A.: J. RAMON ROMO. [RUBRICAS.]

Derecho por pagar—Por tres y medio pliegos escritos a 6 rs. \$2.5—Por la concordata—6—Suma \$8.3.

Ures Julio 10 de 1855.

BUSTAMENTE. [RUBRICA.]

Derechos al tazador—cuatro reales.

Vo. Bo.

PEDRO FERNANDO SALDAMADO. [RUBRICA.]

Ygnacio Pesquiera comandante de Batalion de Urvanos, prefecto y comandante militar del distrito de Ures, capital del departamento de Sonora.

Certifico; que la finna que aparece de los antos anteriores del Sor Juez de 1st. Ynstancia de lo civil Don Jose Bustamante es la misma que acostumbra poner en todos los documentos que ha firmado y autorizado como tal funcionario Y para su validacion,

(One stamp and one seal.)

le autorizo en la misma fecha a pedimento del interesado.

Y. PESQUERA. [RUBRICA.]

(Endorsements:) Case No. 10, file No. 2. United States court of private land claims. The Reloj Cattle Company, plaintiff, vs. The United States of America, defendant. Copy of expediente. Filed this 29th day of May, 1897. James H. Reeder, clerk, by R. L. Long, deputy.

170

(PLAINTIFF'S EXHIBIT 3.)

Copy of Translation of Expediente of San Pedro Grant.

Good for the bianannual of 1820 and 1821. Scrawl, third seal, two reals, years one thousand eight hundred and fourteen and fifteen. A seal that says: Fernando VIII, D. G. M., years 1816 and 1817. Another seal that says: Fernando, Don Jose de Jesus Perez, resident of this capital.

Before Your Lordship, according to law and the royal ordianances concerning lands, laws, approbations, and instructions in relation to the royal lands and their disposition, with which H. M. (D. G. M.) favors his subjects, I appear and say—

That in order to take care of some live stock, not having as my own property any lands where to raise and locate them, I apply to Your Highness (with the prior consent of my father), so that in conformity with what is provided by the laws of the nation and what is provided by the royal cedula of the 14th of February of 1805 to register the deserted place on the river San Pedro, situated in this province towards the northern frontier of the enemy, near the abandoned place called Nutrias, in view of which I offer to satisfy Your Majesty (D. S. G.) with the usual fees for settlement—the half per cent. dues and the other necessary fees; for so it is in exact justice what I represent.

Wherefore I pray Your Majesty to order a commission to carry out the proceedings of viewing and reconnoitering the lands, survey, appraisement, publication, possession and sale of the four sitios to be surveyed to me in the figure of a square or quadrilatera, according to the condition of the land. In such terms I request of Your Highness to grant my solicitude, in which I will receive favor. I make the necessary protests.

JOSE DE JESUS PEREZ. [A SCRAWL.]

Alamos, March 12th, 1821.—Presented and accepted without prejudice to third parties.

171 Don Nazario Gomez shall proceed to survey, appraise, and perform the other acts in the usual form, summoning neighboring owners, and after finishing them let him report to me, so as to give affect to the other acts necessary.

CORDERO. [A SCRAWL.]

FRONTERAS, 28th of April, 1821.

Received from the agent, Don Rafael Salas, the foregoing superior decree of commission, in virtue of which I make the necessary notification and ask for the help to be provided by the constitutional alcalde of this precinct, so as to proceed with the survey.

I, Don Nazario Gomez, judge commissioner, so decreed, ordered, and signed before those of my assistance according to law.

I certify.

NAZARIO GOMEZ.

Ass.: LUCIO GOMEZ.

Ass.: FULGENCIO TELLES. [A SCRAWL.]

22-834.

On the 29th of the present month the notification provided for in the foregoing was issued. In witness whereof I make this with my scrawl.

[A SCRAWL.]

On the 30th of the present month and year the constitutional alcalde, Don Miguel Teran, answered my request in the negative for the help asked of this court, in which he demanded the delivery of the expediente into his possession in the following terms, saying (among other things), I hope you will forward them to me, so as to give due course to the superior decrees, for I cannot give the permit for the survey if the same is not done by myself, being subject to make explanations to the higher powers whenever these may demand them, which I reserve for that occasion, which is my answer to your communication.

In virtue of which and allowing it to rest upon his responsibility

172 I transferred the present expediente to him, requiring a receipt for the protection of this court, and by the present I so decreed and signed it according to law.

I attest.

NAZARIO GOMEZ.

Ass.: LUCIO GOMEZ.

Ass.: FULGENCIO TELLES. [SCRAWLS.]

FRONTERAS, May 3d, 1821.

Act of Obedience.

The foregoing superiordecree received—delivered to this court by Don Nazario Gomez, in virtue whereof, and Don Rafael Salas having presented himself as the representative of Don Jose Jesus Perez,

the interested party, whose power of attorney I certify as having seen, I ordered the survey; to which end I ordered to be appointed an agent for the treasury, surveyors, appraisers, and compassman, and, as in the persons of Don Lucia Gomez, Don Ramon Benites, Don Teodoro Aros, and Don Luis Aragon reside the qualities of aptness, well-known practical skill, and knowledge, I appointed, as I do appoint, the first as agent of the treasury to reconnoiter the country, looking over and to guard the interest of the public treasury; the second and third, that is Benites and Aros, as appraisers, and the fourth, Don Luis Aragon, as compassman; therefore let them be notified of their appointments, so that accepting they may be sworn and qualified according to law, and, whatever results, to proceed according to law. I, Don Miguel Teran, constitutional alcalde of this precinct and surveying judge in this case, so decreed, ordered, and signed it in regular form of law.

I attest.

MIGUEL TERAN.

JULIAN MONTANO. [SCRAWL.]

173 Immediately thereafter I, the surveying judge, by virtue of the foregoing order, summoned to this court the person of Don Lucio Gomez and notified him of his appointment as agent of the public treasury for the survey, and, being informed of it, said that he hears it, and he signed with me in the regular form of law and my assistants.

I attest.

MIGUEL TERAN.

LUCIO GOMEZ.

JULIAN MONTANO. [SCRAWL.]

Thereafter, the person of Don Luis Gomez being present, the appointed agent of the treasury, I put him under oath in due form of law, by God our Lord and the holy cross, under which and the penalties he offered to faithfully and legally discharge his commission, protesting not to defraud the public treasury or allow anything to be done contrary to the benefit of the same, which he will do without injury, fraud, corruption, or deceit, in accordance with the oath he has taken. He said he was twenty years old, married, and a citizen, and he signed it before me and my assistants according to law.

I attest.

MIGUEL TERAN.

LUCIO GOMEZ.

JULIAN MONTANO.

I, the said alcalde and judge of survey, having seen the acceptance and oath of the appointed agent of the public treasury, Don Lucio Gomez, said that I accepted and I do accept it, and to that end I interposed and do interpose my authority and judicial decree, and by it I give and do give him power and faculty as much as in law is required and to be necessary to make it full-binding; that in the

name of the public treasurer may perform every act, agency, and process that the same would do for itself (the treasury) on the subject, and by these presents I so decreed, ordered, and signed in the ordinary form.

174 I attest.

MIGUEL TERAN.

Assistant:

JULIAN MONTANO.

Assistant:

On the same day and year, I, the named alcalde and judge of survey, with prior accord of the fiscal agent (of the treasury) named, I summoned and there appeared before me at this court the persons named, Don Ramon Benites, Don Teodoro Aros, and Don Luis Aragon, who being present, I notified their appointment of the charges of surveyors, appraisers, and compassman, and each one and altogether and in common said they were willing to accept and did accept the said charges, and they signed it before me, the fiscal agent, and witnesses assisting, with whom I act according to law.

I attest.

MIGUEL TERAN.

LUCIO GOMEZ, *Fiscal Agent*.

TEODORO AROS.

RAMON BENITEZ.

LUIS DE ARAGON.

JULIAN MONTANO. [SCRAWL.]

Thereafter following, with the prior accord of the fiscal agent named, and in virtue of the acceptance made by D. Ramon Benitez, D. Teodoro Aros, and D. Luis Aragon, whom I certify are personally known to me each and altogether, and other formalities, took oath, which they did in due form of law, by God our Lord and the holy cross, under which and the penalties they offered to act faithfully and legally, consistent with their knowledge and understanding in the adjustment of the land, without fraud or deceit.

In witness whereof and due observance of the same they signed it before me, the fiscal agent, and my assistants, with whom

175 I act in the ordinary form according to law.

I attest.

MIGUEL TERAN.

LUCIO GOMEZ, *F. A.*

RAMON BENITEZ.

LUIS DE ARAGON.

JULIAN MONTANO. [SCRAWL.]

Having seen the acceptance and oath made by the officers of appraisal and compassman in the present proceeding, I said that I accepted them and do accept them as experts to survey, appraise, and compassman, for which purpose I would interpose and do interpose my authority and judicial decree, giving as I do give them by

these presents all power and authority necessary that they may, after examining the lands, pastures, forests, springs, and pools, according to their species, quality, and circumstances, adjust and appraise them, with the legality and scrupulosity required on the subject, and by these presents I so decreed, ordered, and signed it, with my assistants, according to law.

I attest.

MIGUEL TERAN.
TEODORO AROS.

Assistant:

JULIAN MONTANO.

On the third day of the month of May I, the said alcalde and judge of survey of these proceedings, said that, inasmuch as the process of appointing the necessary officials had been concluded, there being no neighboring owners to summon, let publication by posting be made, calling whoever may think himself entitled, and by these presents let it be known that on the sixth of the present month, as the time when they will be heard, attended to, and awarded them their dues, that they may ask, and may have in the premises, and by the present I so decreed, ordered, and signed in due form.

176 I attest.

MIGUEL TERAN.
JULIAN MONTANO. [SCRAWL.]

Forthwith the publication provided for in the foregoing order was posted; in witness whereof and for the proper affects of the same in law I make this, which I signed with a scrawl. Having summoned Don Manuel Antunes, and he having answered on the 17th of the present month, what may be seen by the proceeding which I order to be annexed to the expediente that it may have the affects attached to it in law, let him be present at the process of survey.

And by the present I so decreed, ordered, and signed according to law:

I attest.

MIGUEL TERAN.
LUCIO GOMEZ.
JULIAN MONTANO. [SCRAWL.]

Answering your communication of the 16th inst., I will be present at the place you summon me concerning the survey of the lands in favor of Don Jose de Jesus Perez, which is to be done on the San Pedro river, and there I will designate the land which I am almost ready to register, complying eventually with the requirements for settlement with His Majesty, and in case such survey should extend over the lands that I will designate as having been occupied by me for the period of two years with my cattle, in such case I will make an adverse claim and bid for them as I may think proper.

God bless you many years.

Terrenate, May 17th, 1821.

MANUEL ANTUNES. [SCRAWL.]

At the place called San Pedro, on the eighteenth day of the present month and year, I, the same alcalde, the fiscal agent being
 177 present, also the officers, surveyors, appraisers, and compass-man, before my assistants, personally appeared Don Manuel Antunez, and said that they could survey from the house of San Pedro, going down the river, as by following that route no damage would result to him; but going up the river it would be hurtful to him, as he considered himself in possession there, and those lands being included in the sitios he occupies and which he expects from day to day to be adjudged to him, which being declared by the said Antunes and heard by the attorney-in-fact, Don Rafael Salas, this one excepted to the damage that would result to his principal by depriving him of the water coming from the cienego (marsh) which is the source of the water-course in this locality, in which case it would be useless to make the survey on behalf of his principal. On this subject Antunes and Sales entered into a controversy until, in view of the trouble, expenses, and injury that would result to either of them, being conciliated, they made concessions and agreed to demand each one-half of the water of the cienega (marsh) for the use of the farms, obliging themselves by these presents to harmony, and so they bound themselves, Antunes for himself, and Sales in the name of his principal, in which terms I note it down as a part of this process, which was signed with me by the fiscal agent and other officers, before the assistance with whom I act in the ordinary form in default of clerk, there being none in the manner provided by law, all of which I attest.

MIGUEL TERAN.
 LUCIO GOMEZ.
 RAFAEL SALAS.
 RAMON BENITES.
 TEODORO AROS.
 JULIAN MONTANO. [SCRAWLS.]

Survey.

On the same day, month, and year, being on the spot, and the interested parties having agreed in the presence of the fiscal agent and other officers, I ordered the erection of a corner monu-
 178 ment and square, from which, taking the direction from the southeast to the northwest, there were measured and counted fifty cords, the last ending, going from the house down the river, on the banks of the ford at the falls, where I ordered put a cross monument, and from there were measured and counted fifty cords, the last ending in the valley itself near a hill, distant three cords, where I ordered put a corner monument, and from it were measured and counted fifty cords, the last one ending in front of the Cuachuca mountains, where I ordered put a cross monument upon a rocky hill, and from it were measured and counted fifty cords, the last ending on a bushy table-land, where I ordered put a corner monument, and from there were measured and counted fifty cords, the last ending at the gileh of Bachata, where I ordered put a cross monument for a

general squaring, confining, and dividing line enclosing this header and in the figure of a true square two hundred cords, which make two and a half leagues.

(NOTE BY TRANSLATOR.)—(There is no sense in this sentence in Spanish, but it is intended to mean "that this line was the side of the square.")

There were measured 250 cords, but he calls it "200."

(100 cords make one league, 200 cords make only two leagues.)

And from there, pointing the compass and taking the direction from the northwest to the southeast, there were measured and counted fifty cords, the last ending in the middle of the valley of San Pedro river, where I ordered put a corner monument, and from there in the same direction were measured and counted fifty cords, the last ending, after passing the river, at the foot of a hill, where I ordered put a cross monument, and from it were measured and counted fifty cords, the last ending on the dry creek of Los Barras, where I ordered put a corner monument, and from it were measured and counted fifty more cords, the last ending on a black mound, where I ordered put a cross monument, and from there were measured and

179 counted fifty cords, the last ending at the descent of the Pichaco, where I ordered a corner monument, general square, this line being two hundred and fifty cords, which are two and a half leagues for the side, when, being already late, these operations were suspended to be continued the following day.

In testimony whereof I note it down as a part of the proceedings and signed it with the fiscal agent, officers, interested parties, and those of my assistance.

I attest.

MIGUEL TERAN.

LUCIO GOMEZ.

JOSE RAFAEL SALAS.

TEODORO AROS.

RAMON BENITEZ.

JULIAN MONTANO. [SCRAWLS.]

(May 19th, 1821.)—On the nineteenth day of the same month and year, with the prior attendance of the fiscal agent and other officers being on the spot, at the corner and general square monument, the compass being pointed and the direction taken from the northeast to the southwest, there were measured and counted fifty cords, the last ending in a thick forest, where I ordered put a cross monument, and from it were measured and counted fifty other cords, the last ending in the dry creek "Del Nalpais," where I ordered put a corner monument, and from it were measured and counted fifty cords, the last ending at the ascending slope of a red table-land, where I ordered put a cross monument, and from it were measured and counted fifty cords, which ended, the last, on the same table-land, where I ordered put a corner monument, general square, confining and dividing line, from which, taking the direction from the southwest to the northeast, there were calculated as measure, the country being impassable, two hundred and fifty cords, which are two and a half leagues, with

180 which operation four sitios of land for raising of cattle were located, headed, surveyed, and centered without damage to any person, thanks to the agreement entered into.

(NOTE BY TRANSLATOR.)—(The surveys given here call it a square of $2\frac{1}{2}$ leagues on a side, and this is calculated by the alcalde as 4 square leagues or sitios, but such square of $2\frac{1}{2}$ leagues on a side give $6\frac{1}{4}$ sitios or square leagues.)

And so that it may have the affects proper in law I set it down as a part of the proceedings, which I signed with fiscal agent, officers, interested parties, and my assistants, with whom I act in the ordinary form of law.

I attest.

MIGUEL TERAN.
LUCIO GOMEZ.
JOSE RAFAEL SALAS.
TEODORO AROS.
RAMON BENITEZ.
JULIAN MONTANO. [SCRAWLS.]

San Pedro, May 21st, 1821.—The survey being finished, let the proceedings of appraisement by the appointed inspector, D. Ramon Benitez and D. Teodoro Aros, with the prior acceptance of their charge; which having been done, let other proceedings be continued as in law corresponds, and by these presents I so decreed, ordered, and signed in the ordinary form.

I attest.

MIGUEL TERAN.
JULIAN MONTANO. [SCRAWLS.]

Forthwith and in virtue of the foregoing order, in the presence of the appointed fiscal agent, being present the appraising officers, D. Ramon Benitez and D. Teodoro Aros, I notified them personally that under the charge which they have accepted they should appraise and value the land comprised in this survey, which then having understood, said, each together and with common accord, that in consideration of the examination they had made with
181 their eyes and inspectors of the land while surveying them that they valued the three first sitios at sixty dollars each and the remaining one at ten dollars; that this appraisement, according to their faithful knowledge and understanding, is the just and legal value of them, as much on account of the situation of the lands as because it is the common gate of the going and coming of the barbarians enemies; as this fact is public and notorious, frequent and well known, is the true inwardness why these proceedings are so executed as it is possible to do under the circumstances, without *their* being any fraud, malice, collusion, or deceit, conspiracy or fear, because they only minded the oath they have given.

In testimony of which they sanctioned and signed with me, the

fiscal agent, and those of my assistance with whom I act in the ordinary form.

MIGUEL TERAN.
LUCIO GOMEZ.
RAMON BENITEZ.
TEODORO AROS.
JULIAN MONTANO. [SCRAWLS.]

The four sitios having been appraised and valued, I said, hand this expediente to the fiscal agent appointed, so that as far as it goes to examine it for the benefit of the public treasury he may act in the matter properly.

And by the present I so decreed, ordered, and signed according to law.

I attest.

MIGUEL TERAN.
JULIAN MONTANO. [SCRAWLS.]

Judge surveyor :

The fiscal agent appointed in this case says that inasmuch as he with his own eyes had examined the land, run over the various parts, approaches, lines, and the more or less abundance of pastures, waters, forests, and properties of the land, he considers just
182 and legal and without loss to the treasury because its occupation and settlement of it is for the benefit of this and of the whole nation ; that on that account he is of the opinion that information proving the ability of the claimant should be instituted, for which let three honest and truthful witness be summoned and let them say with respect to possession :

1st. If they know the party and with respect to the general—of the law.

2nd. If they know of their own knowledge or by hearsay of the claimant, Don Jesus Jose Perez, has sufficient cattle to occupy these sitios.

3d. If by the occupation and settlement it may not result—great benefit to the public treasury and the nation.

And this having been done you will please send me the information to pass upon it as in law is required. So says for the present the subscriber.

Fronteras, May 22d, 1821.

LUCIO GOMEZ. [SCRAWL.]

Let the information requested by the appointed fiscal agent be taken, for which purpose let summons be issued for Don Jose Yloyes, Don Felix Quijada, and D. Francisco Ramirez, who, with the prior notification of the party, should be sworn ; which done, let the proceedings go on ; and by the present I so decreed and signed according to law. I attest.

MIGUEL TERAN.

A.: FELIZ QUIJADA.

A.: JULIAN MONTANO. [SCRAWL.]

Immediately I summoned and Don Jose Hoyos appeared in this court, who, being confronted with the fiscal agent, was sworn in due form of law, by God our Lord and the holy cross, under which he promised to tell the truth in all he knew and might be asked, and, being asked in the manner contained in the foregoing interrogatory, said :

183 First. That he knows Don Jose Jesus Perez and the generals of the law do not concern him.

To the second : That he knows of his own knowledge that he has sufficient cattle to occupy and settle these lands, as it is a public and notorious fact, and he answers to the third that, in his opinion, it will be beneficial to the public treasury and to the whole nation and from it will result without hinder the traffic, commerce, and industry and the other liberal and industrial arts.

That this is the truth in faith of the oath he has taken. He said he was married, of twenty-nine years of age, a citizen, and he signed it with me and my assistants according to law.

I attest.

MIGUEL TERAN.
JOSE HOYOS.

Ass.: RAFAEL YESCAS.

Ass.: JULIAN MONTANO. [SCRAWLS.]

Forthwith I summoned Don Felix Quijada and he appeared in this court, whom I certify to personally know. I administered to him the oath, which he took before the fiscal agent by God our Lord and a holy cross, under which he promised to tell the truth in all he knew and might be asked, and, being asked as to the contents of the foregoing interrogatory, said :

First. That he does know Don Jesus Perez and the generals of the law do not concern him.

To the second : That he knows by hearsay that the party claimant has sufficient cattle to occupy and settle the place mentioned, and answers to the third that it is public and notorious the opinion the advantage resulting to the public treasury and the nation by the occupation and settlement of deserted places.

184 That this is the truth under the oath taken. He said he was unmarried, of twenty-five years, a citizen, and he signed it with me and my assistants according to law. I attest.

MIGUEL TERAN.
FELIX QUIJADA.

A.: RAFAEL YESCAS.

A.: JULIAN MONTANO. [SCRAWLS.]

On the same day, month, and year I summoned Don Francisco Ramirez and he appeared, to who-, before the fiscal agent, I administered oath, which he took under the due form of law, by God our Lord and a holy cross, under which he promised to tell the truth in all he knew and might be asked, and, being asked as regards the foregoing interrogatory, said :

To the first: That he knows D. Jose Jesus Perez, and that the generals of the law do not concern him.

To the second: That he knows by hearsay that he has sufficient cattle to occupy and settle this grant.

To the third: That to all appearances it is not to be denied the settlement of it would be a benefit to the public treasury and the nation.

That this is the truth in his judgment. He said he was married, forty years old, a citizen, and did not sign because he knew not how. I did so with my assistants, with whom I act in the ordinary form, according to law. I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

The information required by the fiscal agent being finished, let it be handed to the named agent, so that he may do what is proper. I so decreed and signed it according to law.

MIGUEL TERAN. [SCRAWL.]

Surveying judge :

D. Lucio Gomez, fiscal agent appointed in this survey, says that, having seen the condition of the expediente, it and from it according to its progress, it appears beneficial to the public treasury and of all the nation, the occupation and settlement of the place called San Pedro. Therefore, for the benefit of the nation itself and in order to settle, adjudge, and sell to the highest bidder, you will please publish for thirty consecutive days the appraisement made, accepting the bids, offers, and higher prices resulting, and reserving their rights for the day of final disposition, which shall take place at the capital of Arispe, in the temporary assemblage of the royal treasury board, presided over by the intendant governor of the province, who will set the day of auction and perform all the other requirements according to the universal practice according to law required.

It is all that has to say the subscriber, submitting his judgment to the probity of the wise government and the literary knowledge of the enlightened governor of the province.

Fronteras, 26th May, 1821.

LUCIO GOMEZ. [SCRAWL.]

Fronteras, 27th May, 1821.—Having seen the opinion of the said fiscal agent, I said: Let publication be made for the auction of the place called San Pedro, with its appraisement, receiving the bids and better offers, and by the present I so decreed, ordered, and signed it according to law. I attest.

MIGUEL TERAN.

A.: FELIZ QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the same day, month, and year I, the surveying judge, caused publication to be made with beating of drums, which was done by Lazaro Quijada in clear and intelligent voice, as follows:

Be it known publicly and openly that D. Jose Jesus Perez has registered the place of San Pedro, and, his demand being admitted, there were measured or located and segregated four sitios of land for cattle, which were appraised and valued in the sum of one hundred and ninety dollars. In consequence, any one who thinks he
186 has a right, has the means, and desires to offer bids for the land surveyed, let him present himself, and his bid will be accepted and his rights will be kept until the day of final auction, which will take place at Arispe the day that may be appointed by the intendant governor of the province, for which purpose his rights will be preserved; and, no bidder *and no bidder* appearing, I put it down as part of the proceeding, which I signed, with those of my assistance, according to law. I attest and in this paper without prejudice to the royal treasury.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 28th day of the same month and year I, the said alcalde, caused, with beating of drums and by the voice of the crier, to be offered at auction the location and valuation of the place of San Pedro, and, there being no bidder, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 29th day of said month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and valuation of the place of San Pedro, and, there being no bidder, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 30th of the present month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for
187 sale the location and valuation of the place of San Pedro, and, there being no bidder, I noted it down and signed it according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 31st day of said month and year I, the same alcalde, caused, with the beating of drums and by the voice of the crier, to

be offered for sale the location and appraisement of the place of San Pedro, and there being no bidder, I noted it down and signed it according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the first day of June of the year 1821, I, the alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and, there being no bidder, I noted it down and signed it according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the second day of the same month I, the said alcalde, caused with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and, there being no bidders, I noted it down, which I signed with those of my assistance according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

188 On the 3 day of said month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the fourth of the same month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and there being no bidders, I noted it down and signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

NOTE BY TRANSLATOR.—“Offering for sale the location and appraisement” is neither Spanish nor English, but that is the way Miguel Teran puts it.

On the 5th day of said month I, said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and there being no bidders, I noted it down and signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 6th day of said month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place San Pedro, and, there being no bidders, I noted it down and signed with those of my assistance according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 7th day of the same month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place San Pedro, and, there being no bidder, I noted it down, and signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 8th of the present month I, the same alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and, there being no bidder, I noted it down and signed it according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 9th day of said month I, the same alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 10th day of the same month, I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of

the place of San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 11th day of said month and year I, the judge surveyor, caused, with the beating of drums and in a high, clear, and intelligible voice, Lozaro Quijada to say:

Let it be known publicly and openly that D. Jose Jesus Perez has located the place of San Pedro, and, his request having been granted, four sitios of land for cattle were surveyed and segregated, which were appraised in the sum of one hundred and nin-ty dollars. Therefore let any one apply who thinks he has the right, means, or has a desire to make a bid for the said land and his bid will be accepted, which will be kept until the final day of the auction, which will be at Arizpe on the day designated by the intendente governor of the province, for which time the bids will be kept; and, there being no bidder, I noted it down, which I signed with my assistants according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 12th day of the same month I, the said alcalde, caused with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and, there being no bidder, I noted it down, which I signed in due form of law.

I attest.

MIGUEL TERAN.

191 A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 13th day of said month I, the same alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and valuation of the place San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 14th day of said month I, the alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and valuation of the place of San Pedro, and, there being no bidders, I noted it down which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 15th day of said month I, the same alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and valuation of the place San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 16th day of the same month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

192 I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 17th day of the same month and year I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and there being no bidders, I set it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 18th day of said month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and valuation of the place of San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 19th day of the present month, I, the named alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and valuation of the place of San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 20th day of said month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered
193 for sale the location and valuation of San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 21st day of this month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: MONTANO. [SCRAWLS.]

On the 22nd day of the same month I, the said alcalde, —, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 23d of the said month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

194 On the 24th day of the same month I, the same alcalde, caused with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 25th day of the same month I, the named alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and valuation of the place of San Pedro, and,

there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A. : FELIX QUIJADA.

A. : JULIAN MONTANO. [SCRAWLS.]

On the 26th day of the present month and year I, the constitutional alcalde and surveying judge of these surveys, said that the surveying proceedings having been finished that they be forwarded to his lordship the governor intendente, so that his lordship may dispose of it as it may suit his superior pleasure, and by the present I so decreed, ordered, and signed before those of my assistants and on this paper without prejudice to the public exchequer.

I attest.

MIGUEL TERAN.

A. : JOSE HOYOS.

A. : FELIX QUIJADA. [SCRAWLS.]

Hon. governor intendente :

I send to your hands the proceedings of the surveys, examination, appraisalment, and public auction, executed for the deserted
195 place situated on the San Pedro, in favor of D. Jose Jesus Perez, so that you may do what is just. May God preserve Your Excellency many years.

Fronteras, 26th of June of 1821.

MIGUEL TERAN.

Hon. Governor Intendente Don Antonio Cordero, Arispe, 9th of July of 1821, to the fiscal attorney, Cordero. (Scrawl.)

Hon. intendente :

The fiscal attorney of this intendency says that these proceedings of survey, appraisalment, information of competency, and publication of four sitios of public land for raising cattle comprised in the location called San Pedro, situated in the jurisdiction of the presidio of Fronteras, appraised in the sum of one hundred and ninety dollars, at the rate of sixty — for each of the first three and of ten dollars for the rest, and surveyed in favor of its claimant, Don Jose Jesus Perez, resident of this city, are in conformity in every particular with the royal and superior instruction that regulate such matters. This is supposing and taking into consideration the declarations stated in the petition of the interested party, as that land is subject to the hostilities of the Apache enemies vexing that frontier, while the settlement of it is very desirable and advantageous to the settlement of the same.

The fiscal attorney of the public treasury requests, if it so pleases you, to issue order for the citation of parties and proceed to make the three corresponding auctions asking for bidders for the said surveyed land, to be knocked down in the last of them to the highest bidder who may appear, making it known to this one to

pay to the treasury the value for which may be sold said four sitios, the half per cent., dues, and the 18 per cent. for exchange, 2 per cent. demanded as a general charge, and three dollars for the officials attached to the quartermaster general of the army; and after this expediente has been examined and approved by the provincial board, adding the proper certificates as to the above payments, 196 to report the same to the superior treasury department for the disposition that may be proper. This is my opinion which I had not expressed till now, as the expediente had been misplaced, but nevertheless you may do as you think best.

Arispe, June 25th of 1822.

FRANCISCO PEREZ. [A SCRAWL.]

Arispe, July 3d of 1822.—As suggested by the fiscal attorney to this intendency in the foregoing answer, let the three public auctions take place for the lands named San Pedro, described in these proceedings with the prior notification to the agent of the interested party, Don. Jose M. Serrano. The hon. intende. of the province so ordered, decreed, and signed it, with the assistant witnesses, in default of the secretary.

BUSTAMENTE. [A SCRAWL.]

A.: JOAQUIN ELIAS GONZALES.

A.: ANTONIO APALATEGUI. [SCRAWLS.]

Forthwith being present Don Jose Ma. Serrano, he was notified of the opinion of the fiscal attorney and the act of approval that precedes, and, being informed he signed it with the hon. intendent and his assistant witnesses.

BUSTAMENTE.

A.: JOAQUIN ELIAS GONZALES.

As.: ANTONIO APALATEGUI. [SCRAWLS.]

1st auction.

In the city of Arispe on the 3d day of the month of July of one thousand eight hundred and twenty-two, assembled at this capital the board of auction, the ho. intendent as president and the members composing it, in order to be put into effect the first auction of the lands described in this expediente. They caused with the beating of drums the assemblage at the office of this intendency of many people, and in their presence the crier, Loreto Salcido was ordered to make publication, as in fact he did so, in a high and clear voice saying there is going to be auction by this board of auction—four sitios of public land for raising cattle, comprised in the location called San Pedro, situated in the precinct of Fronteras, surveyed in favor of Don Jose Jesus Perez, of this city, and appraised in the sum of one hundred and ninety dollars, at the rate of sixty — each one of the first and ten dollars for the rest. Whoever wants to bid for the said public land let him come to do so before this board, 197 where will be accepted whatever he makes, with the understanding that on the third and last auction, to take place the

day after tomorrow, the property will be knocked down to the best and highest bidder.

And there being no bidder, it was set down in the proceedings, which were signed by the president and other members of the board of auction.

BUSTAMANTE.
FUENTES.
ELIAS GONZALES.
PEREZ. [SCRAWLS.]

2nd auction.

In the same city on the 4th day of the same month and year aforesaid, they proceeded to celebrate the 2nd auction of this expediente in the same terms as the first and foregoing one, with the only difference of saying to the public that tomorrow the sale would be finished.

But there being no bidder this was noted down, which was signed by the president and the members of the board of auction.

BUSTAMANTE.
FUENTES.
ELIAS GONZALES.
PEREZ. [SCRAWLS.]

3d auction.

At the city of Arispe, on the fifth day of the month of July of one thousand eight hundred and twenty-two, assembled as a board of auction at this capital the hon. intendente as president and the other members that compose it for the purpose of making the third and last auction of the lands referred to in these proceedings, which with the beating of drums and by the voice of the crier, many people were assembled at the office of this intendente, in the presence of whom it was ordered that Loreto Salcido should make a call, and in fact he did so, equal in every particular as the previous auc-

198 tion, with the only difference that he announced to the public that today the sale would be made to the best and highest bidder. That having been done, appeared D. Jose Ma. Serrano, as the agent of D. Jose Jesus Perez, offering again the appraised value of the land, and, being already the hour of prayer of twelve o'clock meridian, the crier said at last: One, two, three; going, going, going; good, good, may it do good to D-n Jose Jesus Perez.

In this manner was this proceeding finished, the four sitios of public land concerned in this expediente being solemnly sold in favor of the interested party for the sum of one hundred and ninety dollars, in witness whereof it was noted down, which was signed by the agent, Don Jose Ma. Serrano, with the president and the members of the board of auction.

BUSTAMANTE.
FUENTE.
ELIAS GONZALES.
PEREZ.

Arispe, 6th of July of 1822.—Let this expediente, with the proper certified statement of the superior orders on the subject, be forwarded to the agent, Don Jose Ma. Serrano, so that within three days he may make any observations in favor of his principal on the subject, notifying him to appoint, in Mexico, an agent to attend to it in that court. So the intendent of this province decreed and signed it with the witnesses of his assistance.

BUSTAMANTE.

As.: JOAQUIN ELIAS GONZALES.

As.: ANTONIO APALATEGUI. [SCRAWL.]

NOTE.—On the same day, month, and year the expediente, with the aforesaid certificate, was delivered to the agent.

(Scrawl.)

Hon. intendente:

Don Jose Ma. Serrano, as agent for D. Jesus Perez, of this city, appeared before you and says: I make prompt return of this expediente and of the certified testimony of the lands known as San Pedro, which were handed to me. On doing so I expressed myself satisfied with every act up to the public auction as everything has been done according to the regulations and superior orders concerning the matters and things comprised in said testimony, and I only have to request you to order the prompt conclusion and termination of this expediente, so that, the approbation of the superior board being obtained, the proper title of grant and confirmation of—

(Admit to composition meant that the King waived all shortcomings in the proceedings and accepted them on their face as true.—
"TRANSLATOR.")

the four sitios contained in said land may be issued, being ready to appoint in Mexico an agent duly empowered to take care of the business in that court.

Wherefore I request and beg of you to order as I petition because in this my principal will receive favor and gift. I swear not to proceed with malice, &c.

JOSE MA. SERRANO. [SCRAWL.]

Acted upon at sight, in the city of Arispe, on the sixth day of the month of July of one thousand eight hundred and twenty-two.

The hon. intendente *ad interim* of the province of Sonora and Sinaloa, minister and treasurer, D. Ygnacio De Bustamante y Valasco, having seen these proceedings of survey appraisement, publications, auctions and sales of the lands of San Pedro, surveyed for raising of cattle and horses, in favor of Don Jesus Jose Perez, neighbor of this city, and located in the precinct of Fronteras, the answer made by his agent, Don Jose Maria Serrano, in the foregoing writing, with everything else appearing and proper to see, said that declaring as he does declare the said proceedings sufficiently in

form and in accord with the regulations prescribed by the superior orders now in force on such matters and admitting as he does immediately admit to settlement with the imperial treasury the said parcel of the royal lands by Don Jose Jesus Perez, he should order and he does order that his agent be notified to pay into this treasury the sum of two hundred and eighty dollars and one grain, in this form: One hundred and ninety dollars as the value of which were sold to said interested party four sitios contained in the surveyed land; eleven dollars and one real eight grains, as the half per cent. import and the 18 per cent. for exchange; three dollars six reals and five grains, corresponding to the 2 per cent. imposed as a general tax, and three dollars as dues belonging to the old extinct office; and this sum having been paid, adding for it the proper certificate to this expediente, report should be made of the same to the superior board of the treasury for its approbation or the determination that may be proper.

The hon. intendente by this act so provided, ordered and signed, with assistant witness in default of clerk.

BUSTAMANTE.

A.: JOAQUIN ELIAS GONZALES.

A.: ANTONIO APALATEGUI. [SCRAWLS.]

Immediately, the agent D. Jose Ma. Serrano being present, he was notified of the foregoing act, of which he became cognizant, and he signed it with the hon. intendente and assistant witnesses.

BUSTAMANTE.

A.: JOAQUIN ELIAS GONZALES.

A.: ANTONIO APALATEGUI. [SCRAWLS.]

Board of the provincial imperial treasury, Arizpe, 7th of 1822.

Approbation.

Let it be declared forthwith as legally, publicly, and solemnly sold at public auction, in this capital, on the 5th of the present month, in favor of Don Jose Jesus Perez, of this city, the four sitios of public land for raising cattle, comprised in the location called San Pedro, situated in the precinct of the presidio of Fronteras, for the sum of one hundred dollars, its just value; and therefore let report of this expediente be made to the superior board of the treasury for its approbation, or the public determination, as has been ordered by this intendency in the foregoing act. So it was ordered and signed by the gentleman president and the other members of the provisional board.

BUSTAMANTE.

FUENTE.

ELIAS GONZALES.

PEREZ. [SCRAWLS.]

Arispe, 7th of July, 1822.—Let the order of the provincial board of this intendency in the foregoing communication be executed.

BUSTAMANTE. [SCRAWL.]

Antonio Carrillo, commissary of the treasury of Arispe for the State of Sonora, certifies—

That on page 55 of the journal for the year 1822 the following entry is found :

July 8th.—Charged two hundred and eight dollars and one grain which was paid into this treasury in the name and as the agent of D. Jose Jesus Perez, resident of this city, in this form :

190 dollars, as the principal value in which were sold by the intendency four sitios of public land for raising cattle, compromised in the location called San Pedro, situated in the precinct of Fronteras.

11 dollars one real and 8 grains for the half per cent. impost and the 18 per cent., 3 dollars 6 reals 5 grains ordered to be paid as a general tax, and three dollars as the duty for the extinct office of the treasury, as is provided by the communication of the

intendency known as No. 30..... \$208.01

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FUENTE.

GONZALES.

JOSE MA. SERRANO.

In witness whereof I give the present in duplicate, at the request of the hon. treasurer general of the State, D. Jose Maria Mendoza, in this common paper as there is none of the official paper to be found at Arispe, on the twenty-fifth day of October of one thousand eight hundred and thirty-two (1832).

ANTONIO CARRILLO. [SCRAWL.]

Hon. treasurer general :

Ygnacio Perez, in the name of his brother, Jose de Jesus Perez, before you, in the proper form, I appear and say that, by the original expediente which I deliver into your hands, you will be good enough to note that on the 5th of July of 1822 the land called San Pedro, situated in the jurisdiction of Fronteras, comprising four sitios of land, was sold at auction to my said brother, and, having transferred his rights therein in due form of law to Rafael Elias, and inasmuch as the corresponding title of grant has not yet been issued, I ask and pray to Your Excellency to order the issuing of the proper title in favor of the citizen Rafael Elias as the present owner and proprietor of the land of San Pedro, favor which I trust will grant me, swearing not to act in malice.

Arispe, 25th of October of 1832.

YGNACIO PEREZ. [SCRAWL.]

Arispe, October 25th of 1832.—Presented with the accompanying expediente.

Let the proper report be made to the supreme government of the State, in compliance to what is provided in article 28 of law No. 30 of May 20 of 1825 for the orders that may be convenient.

The treasurer general of the State of Sonora so provided, ordered, and signed it with assistant witnesses according to law.

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MENDOZA.

A.: MARIANO ROMO.

A.: JOSE MA. PEREZ. [SCRAWLS.]

Arispe, 31st of October of 1832.—Let a copy of the consultation made to the supreme government and the original resolution of the same be annexed, and by virtue of it let the proper title grant be issued in favor of the citizen Rafael Elias for four sitios of land at the location of San Pedro. The treasurer general of the State so provided and signed it with the assistant witnesses according to law.

MENDOZA.

A.: LUIS CARRANCO.

A.: BARTOLO MIRANDO. [SCRAWLS.]

Treasury general of the State of Sonora.

YOUR EXCELLENCY: The citizen Ygnacio Perez, of this city, has placed in my hands, with the proper communication the expediente, which I have the honor to place in yours, containing the registry, survey appraisement, publication, and auction sale of four sitios of land in the place named down the San Pedro river in favor of the citizen Jose de Jesus Perez. It appears by the certificate annexed also to the expediente that he paid to the national treasury of this capital the sum of two hundred and eight dollars one grain as the value of the land and the respective dues, and, lastly, he asks that, he having made an exchange in the land in favor of the citizen Rafael Elias, the title be issued in favor of this, complying at the same time with article 27 of the law No. 30 of May 20 of 1825, and this treasury is giving you this, in conformity with the 28th—of the same law has the honor to inform you that he considers as sufficient, legal, and completed with all the formalities established by law the said expediente to be issued thereupon—the title asked for; nevertheless you may do as may please your superior pleasure.

God and liberty.

Arispe, 25th of October, 1832.

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JOSE MA. MENDOZA.

To his excel. the governor of the State.

Copy.

Arispe, October 25th, 1832.

MENDOZA. [SCRAWL.]

A seal that says: Government of the free State of Sonora.

Having examined the expediente for lands which you accompany with your note of the 25th of this ending month, comprising four sitios surveyed at the locality named down the San Pedro river in favor of Don Jose Jesus Perez, I return it to you so that you may issue the title to Don Rafael Elias, as it belongs to him by the exchange made of it to him by Don Ygnacio Perez, of this city.

God and liberty.

Arispe, October 31st of 1832.

YGN'O DE BUSTAMANTE. [SCRAWL.]

LUCIO RODRIGUEZ,

1st Officer. [SCRAWL.]

Treasurer general of the State.

The foregoing documents having been annexed to the original expediente, this was concluded with all the requisites and formalities established by the laws remaining in the custody of the archives of this treasury general as a perpetual witness thereof.

Wherefore in the exercise of the powers conceded on me by the laws of these presents and in the name of the sovereign State of Sonora I grant title to four sitios of land for raising cattle and horses comprised in the location aforesaid at San Pedro, in the jurisdiction of the presidio of Santa Cruz, in favor of the citizen Rafael Elias, to whom I grant, give, and adjudge said lands by way of sale and with the quality, firmness, and stability established by the laws for himself, his sons, heirs, and successors, with all its ingresses and egresses, uses, customs, timber, forests, pastures, waters, 205 springs, pools, and other things belonging to it, with the very precise and exact condition that they must settle and occupy said lands without leaving them unprotected, deserted, or unsettled for any time, with the understanding that if such would happen for the period of three years consecutively and there should be any person to petition for them, in such event, with the prior justification of the fact, they shall be declared public land and may be granted anew to the highest and best bidder, excepting, as it is just it should, those cases in which the abandonment took place by reason of the notorious invasion of the enemy, and only for the period of such happenings, reminding the citizen Rafael Elias, as he is reminded, that he must confine himself to the limits of the land, its belongings, bound-ries, and monuments, specified in the foregoing proceedings of survey, observing and exactly obeying art. 30 of law No. 30 of May 20 of 1825, which provides for the maintenance on the bound-ries—monuments of stone and mortar, under the penalty of twenty-five dollars which they will incur in default for the benefit of the common, in which case the same to be constructed at the expense of the interested party by the local justice.

And I order and command the judges, courts, and authorities of the locality, the present and the future of this capital, that on behalf of the well and prompt administration of justice and in compliance of the laws on the subject that they do not allow the said interested party nor his successors to be in any manner perturbed, disquieted, nor molested in the free use of the property, dominion, and possession of the aforesaid four sitios of land comprised in the named location of San Pedro; on the contrary, they should watch and constantly take care, with the greatest vigilance and activity, that they be protected and maintained always in the quiet and pacific possession to which they are entitled in law, so that in that manner they may freely sell, exchange, give, transfer, grant, 206 and mortgage said lands at their will and free option as owner- and absolute proprietors.

In which term I issued the present title in due form granted in favor of the citizen Rafael Elias, his sons, heirs, and successors, de-

livering it to them for their protection, with the prior annotation made of it in the proper book.

Given in this capital of Arispe on the 8th day of the month of May of one thousand eight hundred and thirty-three, authorized and signed by me and sealed with the seal of this treasury general, before the undersigned witnesses of my assistance, in default of clerk, which there is not.

JOSE MARIA MENDOZA.

A.: MARIANO ROMO.

A.: LUIS CARRANCO. [SCRAWLS.]

[Seal Treasury General of the Free State of Sonora.]

Annotation of this title is taken on the proper book existing in this treasury general on page 12.

JOSE MARIA MENDOZA.

[A SCRAWL.]

Treasurer General of the State of Sonora.

I certify on page 34 of the Journal of the present year appears the following entry:

May 8th, charge for title to lands, thirty dollars, paid by the citizen Rafael Tubia in the name of the citizen Rafael Elias, resident of this capital, for the value of the title duly issued by this treasury general today in favor of the said Elias of four sitios of land for raising cattle and horses comprised in the location called San Pedro, in the jurisdiction of the presidio of Santa Cruz, and of this payment is issued the proper certificate, \$3,000.

MENDOZA.

MILLA.

RAFAEL ZUBIA.

207 In witness whereof, where it may do the most good, I give the present at Arispe, on the eighth of May, one thousand eight hundred and thirty-three.

JOSE MARIA MENDOZA.

It is a copy.

Ures of 1855.—It agrees with the original, from which it is faithfully taken, corrected, concorded, with the proper seal, in eight good leaves, today, July the ninth of one thousand eight hundred and fifty-five.

In witness whereof I authorize and sign it with my assistants.

JOSE BUSTAMENTE.

A.: ESTRELLA CORDOVA.

A.: A. J. RAMON ROMO. [SCRAWLS.]

Dues to be paid.—For three and a half leaves of paper at 6 reals, \$2.5, for comparing, 6; total \$3.3.

Ures, July 10th of 1855.

BUSTAMENTE. [SCRAWL.]

Dues of the collector four reals.

Vo. bo.

PEDRO FERNANDO SALDANANDO. [SCRAWL.]

Ygnacio Pesquiera, military commander of the district of Ures, capital of the department of Sonora.

I certify that the signature that appears in the foregoing acts of the civil judge of the 1st instance, Don Jose Bustamente, is the same which he uses in all documents which he has signed and authorized as such functionary.

In witness whereof I authorize it with the same date at the request of the interested party.

Y. PESQUERIRA. [SCRAWL.]

(Endorsements:) C. 10, F. 3. U. S. court of private land claims. *The Reloj Cattle Co. vs. United States.* Copy of translation of expediente. Filed May 29, 1897. James H. Reeder, clerk, by R. L. Long, dep.

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(PLAINTIFF'S EXHIBIT 4.)

STATE OF SONORA, }
Republic of Mexico, } ss :

LOLA ELIAS.

Be it remembered that pursuant to the commission hereto annexed, and on the 12th day of October, 1892, at Nogales, in the State of Sonora, Republic of Mexico, before me, Delos H. Smith, consul of the United States of America in and for the city of Nogales, in said State of Sonora, Republic of Mexico, duly appointed and commissioned to administer oaths, etc., personally appeared Dolores Elias, for short called and generally known by the name of Lola Elias, a spinster, one of the witnesses mentioned in the foregoing commission, who, being by me first duly sworn, through Louis Carrillo, a competent interpreter, duly sworn by me according to law to interpret from English into Spanish and from Spanish into English, did make answer to the interrogatories annexed to said commission as follows, the said interrogatories being first interpreted to her into the Spanish language by the aforesaid interpreter :

Answer to the 1st interrogatory. My name is Dolores Elias, but I — commonly known as Lola Elias, Lola being the short Spanish ab-reviation for Dolores. I am twenty-seven years of age; am unmarried. My residence is at Guaymas, but I am here only temporarily. I live with my mother, and have no occupation.

Answer to the second interrogatory. My father's name was Jose Juan Elias. My mother's name is Bernardina Lucero de Elias.

Answer to the 3rd interrogatory. My father is dead. He died in the district of Arispe, in the State of Sonora, in the year 1865, when I was about four months old. I know this because I have heard my mother and older brothers say so.

Answer to the 4th interrogatory. They were married at Tecoripa in the year 1848. I have heard my mother say so.

Answer to the 5th interrogatory. My father left surviving him seven children, as follows : Plutarco, Alejandro, Carlos, Manuel, Ra-

fael, Jesus, and myself; all these are over 21 years of age, and all
 209 reside in the State of Sonora, Mexico, except Jesus, who married
 in 1881 to one Jose Maria Maytorena; she died in 1888, and left
 four children, now living, as follows: Augustina, Filomena, Ber-
 nardina, y Jesus, all being minors, and all reside at Guaymas, in the
 State of Sonora, Mexico.

Answer to the 6th interrogatory. The name of my grandfather
 was Rafael Elias, also known as Rafael Elias Gonzales; my grand-
 mother was Guadalupe Perez de Elias on my father's side. I know
 it because I have — my mother and my uncles, Jose Maria Elias
 and Manuel Elias, say so.

Answer to 7th interrogatory. They are both dead. They died in
 Sonora, Mexico. My grandfather died many years before I was
 born. My grandmother died about the year 1872. My informa-
 tion comes from what I have heard my mother and uncles say.

Answer to the 8th interrogatory. They left surviving them three
 sons, to wit, Manuel, Jose Maria, and Jose Juan; the last was my
 father. Manuel and Jose Maria are now old men, and reside at San
 Pedro, in this State of Sonora. Jose Juan Elias, my father, died as
 stated in the answer to the 5th interrogatory, and the children he
 left and the one who died, Jesus, and the children she left, where all
 reside, and their ages are as is stated in said 5th interrogatory.

Answer to 9th interrogatory. My grandfather, Rafael Elias, was
 the only son of Rafael Elias, the last being therefore my great-grand
 father, and this, my great-grandfather, Rafael Elias, was a full
 brother of Ygnacio Elias and Eulalia Elias, the persons to whom the
 Mexican government granted the said ranch of San Ygnacio del
 Barbocomari, situated in the Territory of Arizona. All this I know
 from the talk I have often heard of my mother and my uncles and
 as a tradition in our family.

Answer to the 10th interrogatory. His name, as I said before, was
 Rafael Elias. He is dead. He died a great many years ago. I do
 not know of any other children that he left surviving him other
 than my grandfather, Rafael Elias. I have already given the names
 and ages of his descendants.

210 Answer to the 11th interrogatory. I was only about a year
 old when she died and do not remember her of my own
 knowledge.

Answer to the 12th interrogatory. She is dead. As I said before,
 I have heard that she died about the year 1866. She died in Arispe,
 the State of Sonora, Mexico. I know this from what I have heard
 my mother and uncles say in my presence.

Answer to the 13th interrogatory. She was never married, and she
 died and without successions of her body. My information comes
 from the tradition in the family as I heard them from my mother
 and other relations.

Answer to the 14th interrogatory. As Eulalia Elias was the sister
 of my great-grandfather, Rafael Elias, she was my great-grandaunt.
 The family tree is as follows: E-lalia Elias was sister of Ygnacio
 Elias and my great-grandfather, Rafael Elias. My great-grand-
 father died, leaving a son of the same name, Rafael Elias, who was

my grandfather. My said grandfather, Rafael Elias, died, leaving three children, to wit, Jose Maria, who is living; Manuel, who is also living, and father, Jose Juan, who is dead. I have already stated what children my father, Jose Juan Elias, left surviving him, and have given their names and ages and place of residence.

DOLORES ELIAS.

Sworn and subscribed before me this 12th day of October, A. D. one thousand eight hundred and ninety-two, at Nogales, Sonora, Mexico.

DELOS H. SMITH,

U. S. Consul.

[SEAL.]

I, Delos H. Smith, consul of the United States of America, residing at the city of Nogales, in the State of Sonora, Republic of Mexico, do hereby certify that the foregoing answers of the witness Dolores Elias were reduced to writing and were read over and corrected by said witness, and that the same were signed and sworn to by said witness before me this 12th day of October, A. D. eighteen hundred and ninety-two.

211 In witness whereof I have hereunto set my hand and affixed the seal of this consulate, at Nogales, in the State of Sonora, Republic of Mexico, this 12th day of October, A. D. 1892, and the Independence of the United States the 117th.

DELOS H. SMITH,

U. S. Consul.

[SEAL.]

212 The Territory of Arizona, United States of America, to any notary public of the State of Sonora, Republic of Mexico, or any minister, commissioner, or charge d'affairs resident in or accredited to the Republic of Mexico, or any consul general, consul, vice-consul, commercial agent, vice commercial agent, deputy consul, or consular agent of the United States resident in the Republic of Mexico, Greeting:

You or either of you are authorized and required to summons and to cause to appear before you Plutarco Elias, Alejandro Elias, Carlos Elias, Manuel Elias, Jesus Elias, Lola Elias, Rafael Elias, and Jose Maria Elias, residents of *in* the State of Sonora, Republic of Mexico, forthwith, and to take the answers, under oath, of each of said witnesses to the interrogatories hereto annexed, propounded to each of said witnesses in a certain cause now pending in the district court of the first judicial district of the Territory of Arizona in and for the county of Pima, wherein Santiago Ainsa, administrator of the estate, with will annexed, *of the estate* of Frank Ely, deceased, and Santiago Ainsa, trustee, and Santiago Ainsa, administrator of the estate of Jose Juan Elias, deceased, are plaintiffs and Robert Perrin, Angel Varela, Elena Varela, Jesus Elias de Serrano, Harvey L. Christie, and The Arizona and New Mexico Railroad Company, a corporation, are defendants; and, having reduced said answers of said witnesses to writing, you will cause each of said witnesses to swear and subscribe to his said answers before you, to which you

will certify officially ; and to return without delay this commission and interrogatories and the answers of the said witnesses thereto to the clerk of the first judicial district court of the Territory of Arizona in and for the county of Pima, and addressed to said clerk, at Tucson, county of Pima, Arizona Territory, in the manner required by law.

Witness Hon. Richard E. Sloan, judge of the said first judicial district court of the Territory of Arizona in and for the county of Pima, at Tucson, in the county of Pima, Territory of Arizona, this 21st day of September, 1892.

Attest my hand and seal of said district court the day and year last above written.

[SEAL.]

BREWSTER CANERON, *Clerk.*

213 Interrogatories to be propounded to each of the witnesses Plutarco Elias, Alejandro Elias, Carlos Elias, Manuel Elias, Jesus Elias, Lola Elias, Rafael Elias, and Jose Maria Elias on behalf of plaintiff.

1st interrogatory. State your name, age, residence, and occupation.

2nd interrogatory. What if the full name of your father and your mother ?

3rd interrogatory. Are your father and mother living or dead ? If either is dead, state when and where he or she died ; also state the source of your information.

4th interrogatory. When and where were your father and mother married to each other ? And give the source of your information.

5th interrogatory. If you say that your father is dead, then state what children he left surviving him ; give the full name, present age, and residence of each child, and if any such child is dead, then state when and where and at what age said child died ; also state whether or not such deceased child at the time of his or her death —, and, if so, what issue, if any, such deceased child left surviving him or her, and give the name, age, and residence of each such descendant.

6th interrogatory. What was the name of your grandfather and your grandmother on your father's side ? And state the source of your information.

7th interrogatory. Are your said grandfather and grandmother or your father's side living or dead ? If dead, state when and where they died and the source of your information.

8th interrogatory. If you say that your grandfather and grandmother on your father's side are both dead, then state what children they left surviving them ; give the full name, present age, and residence of each child, and if any such child is dead, then state when and where and at what age such child died ; also state whether or not such deceased child was married at the time of his or her death and, if so, what issue, if any, such deceased child left surviving him or her, and give the name, age, and residence of each such descendant.

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9th interrogatory. Was your said grandfather or your great-grand-

father on your father's side relatee in any way to one certain Ygnacio Elias and Eulalia Elias, being the same persons to whom the State of Sonora, Republic of Mexico, sold or granted certain lands by patent or deed dated in the year 1832, said lands being then situate in the said State of Sonora, but being now in the Territory of Arizona, and being known and called the Rancho San Ygnacio del Barbocomari? If so, state what the relationship was, and state the source of your information.

10th interrogatory. If in reply to the last interrogatory you say that your great-grandfather was a brother to said Eulalia Elias, then give the name of your said great-grandfather, state whether he is living or dead, and, if dead, state when he died and what children he left surviving him, and give the full name, present age, and residence of each child, and if any such child is dead, then state when and where and at what age such child died, also state whether or not such deceased child was married at the time of his or her death, and, if so, what issue, if any, such deceased child left surviving him or her, and give the name, age, and residence of each such descendant.

11th interrogatory. Are you, or were you ever, acquainted with the aforesaid Eulalia Elias?

12th interrogatory. Do you know whether or not the said Eulalia Elias is living or dead? If you say that -he is dead, then state, if you know, when and where she died, and give the source of your information.

13th interrogatory. If you say that the said Eulalia Elias is dead, then state whether or not she had been ever married, and give the source of your information.

14th interrogatory. Are you related to the said Eulalia Elias? If so, state the relationship, also show how the same arises, and make a family tree.

SELIM M. FRANKLIN,
Attorney for Plaintiff.

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(PLAINTIFF'S EXHIBIT 5.)

This indenture, made the third day of May anno Domini eighteen hundred and eighty-three at Tucson in Pima Co., Arizona Territory by and between Santiago Ainsa the duly appointed, qualified and acting administrator of the estate of Jose Juan Elias deceased, the party of the first part, and James M. Hall of the county of Cochise, A. T. the party of the second part, witnesseth:

That whereas, on the 13th day of November eighteen hundred and eighty, the probate court within and for the said county of Pima, Territory of Arizona, made an order of sale, authorizing the said party of the first part to sell certain real estate of the said estate of Jose Juan Elias deceased, situated then in Pima county, and now in both Pima and Cochise counties, Territory of Arizona, and specified and particularly described in said order of sale, either in one parcel or in subdivisions, as the said party of the first part should judge most beneficial to said estate: and which said order of sale,

now on file and of record in the said probate court, is hereby referred to and made a part of this indenture:

And whereas, under and by virtue of said order of sale, and pursuant to legal notices given thereof, the said party of the first part, on the 18th day of April A. D. eighteen hundred and eighty-three at the city of Tucson, Pima Co. in said Territory, between the hours of nine o'clock in the morning and the setting of the sun on the same day, to wit: at 10 o'clock a. m., offered for sale in parcels (judging it most beneficial to said estate), at private sale and subject to confirmation of said court, the said real estate, situated in the said counties of Pima and Cochise and specified and described in said order of sale as aforesaid, and at such sale the said party of the second part became the purchaser of the San Pedro grant, a parcel of said real estate hereinafter particularly described, for the sum of thirty-eight hundred and twenty-five dollars, he being the highest and best bidder, and that being the highest and best sum bid.

And whereas, the said probate court, upon the due and legal return of all of the proceedings under the said order of sale, 216 made by the said party of the first part on the 18th day of April eighteen hundred and eighty-three, after making the said sale, did, on the 30th day of April eighteen hundred and eighty-three make an order confirming said sale, and directing conveyances to be executed to the said party of the second part; a certified copy of which order of confirmation was recorded in the office of the county recorder of said Cochise county within which the said land sold is situated on the 1st day of May A. D. eighteen hundred and eighty-three in Book 1 of Orders of the Probate page 51, and which said order of confirmation now on file and of record in said probate court, and which said record thereof in said recorder's office are hereby referred to and made a part of this indenture.

Now, therefore, the said Santiago Ainsa, administrator of said estate of Jose Juan Elias deceased, as aforesaid, the party of the first part, pursuant to the order last aforesaid, of the said probate court, for and in consideration of the said sum of thirty-eight hundred & twenty-five dollars to him in hand, paid by the said party of the second part, receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns forever, all the right, title, interest and estate of the said Jose Juan Elias deceased, at the time of his death, and also all the right, title and interest that the said estate, by operation of law or otherwise, may have acquired, other than, or in addition to, that of said intestate, at the time of his death, in and to all that certain lot, piece, or parcel of land, situate, lying and being in said county of Cochise, Territory of Arizona and bounded and particularly described as follows, to wit: One undivided third interest in the San Pedro grant, beginning at a point on the line which divides Mexico from the United States, about one and one-half mile- west from the place where the San Pedro river crosses the said boundary line, and running thence in a northerly direction about eleven (11) miles to the southwest cor-

ner of the San Rafael del Valle grant; thence in an easterly direction along the southern line of the San Rafael del Valle grant, ten miles, to a monument of stones; thence in a southerly direction eight miles, to a monument of stone; and thence in a westerly direction about ten miles to the point of beginning; being the same grant which was granted by the Mexican authorities May 8th 1833 to Rafael Elias, grandfather of the said Jose Juan Elias, deceased, the title papers of which land are now on file with the United States surveyor general of Arizona, reference to which is hereby made, said land containing more or less eighteen thousand acres and including all of the land embraced within said San Pedro grant, in the Territory of Arizona, together with all the tenements, hereditaments and appurtenances whatsoever to the same belonging, or in anywise appertaining.

To have and to hold, all and singular, the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part administrator of the estate of Jose Juan Elias deceased as aforesaid, has hereunto set his hand and seal the day and year first above written.

SANTIAGO AINSA, [SEAL.]

Administrator of the Estate of Jose Juan Elias, Deceased.

Signed, sealed and delivered in the presence of—

B. H. HEREFORD.

TERRITORY OF ARIZONA, }
County of Pima, } ss :

On this fourth day of May, A. D. one thousand eight hundred and eighty-three, before me, B. H. Hereford, a notary public in and for the county of Pima, personally appeared Santiago Ainsa, administrator of the estate of Jose Juan Elias, deceased, whose name is subscribed to the annexed instrument as a party thereto, personally known to me to be the person described in and who executed the said annexed instrument as a party thereto, and who duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned as the administrator of said estate.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

B. H. HEREFORD,

[SEAL.]

Notary Public, Pima County, A. T.

Endorsements: Santiago Ainsa, administrator of the estate of Jose Juan Elias, deceased, to James Hall. Deed, dated May 3rd, 1883. Recorder's office, Tombstone, Cochise Co., A. T. Filed and recorded at request of W. F. & Co. May 4, A. D. 1883, at 4 p. m., Book 4, Deeds R. E., pages 715. A. T. Jones, county recorder. Pl. Ex. No. 5.

This indenture, made the second day of April in the year of our Lord one thousand eight hundred and eighty-three between Jose Maria Elias Manuel Elias Santiago Ainsa Estevan Ochoa & P. R. Tully, parties of the first part and James M. Hall the party of the second part, witnesseth that the said parties of the first part for and in consideration of the sum of twenty thousand dollars lawful money of the United States of America to them in hand paid by the said party of the second part the receipt whereof is hereby acknowledged have granted bargained sold and conveyed and by these presents do grant, bargain sell and convey unto the said party of the second part and to his heirs and assigns forever, all our right title and interest in that certain piece or parcel of land situate in the county of Cochise, Territory of Arizona, described as follows, the land grant known as the "San Pedro" grant beginning at a point on the line which divides Mexico from the United States about one & one-half miles west from the place where the San Pedro river crosses the said boundary line and running thence in a northerly direction about eleven miles to the southwest corner of the San Rafael del Valle grant, thence in an easterly direction along the southern line of the San Rafael grant ten miles to a monument of stones thence in a southerly direction eight miles to a monument of stones and thence in a westerly direction about ten miles to the place of beginning, containing eighteen thousand (18,000) acres of land more or less being the same grant which was granted by the Mexican authorities May 8th 1833 to Rafael Elias grandfather of the Jose Juan Elias deceased the title papers of which land are now on file with the United States surveyor general of Arizona reference to which is hereby made for particular description being all the land belonging to said grant lying and being in Arizona Territory together with all and singular the tenements hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions remainder and remainders rents issues and profits thereof.

220 To have and to hold all and singular the said premises together with the appurtenances unto the said party of the second part and to his heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JOSE MA. ELIAS.	[SEAL.]
MANUEL ELIAS.	[SEAL.]
SANTIAGO AINSA.	[SEAL.]
ESTEVAN OCHOA.	[SEAL.]
P. R. TULLY.	[SEAL.]

TERRITORY OF ARIZONA, }
County of Pima, } ss :

On this 18th day of April, A. D. 1883, personally appeared before me, R. M. Wilkin, a notary public in and for said Pima county,

P. R. Tully, personally known to me to be the person described in the foregoing instrument as one of the parties thereto, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in the certificate first above written.

R. M. WILKIN,

Notary Public, Pima County, A. T.

[SEAL.]

TERRITORY OF ARIZONA, } ss:
County of Pima,

On this second day of April, A. D. one thousand eight hundred and eighty-three, before me, B. H. Hereford, a notary public in and for the county of Pima, personally appeared Jose Maria Elias, Manuel Elias, Santiago Ainsa, P. R. Tully, & Estevan Ochoa, whose names are subscribed to the foregoing instrument as parties thereto, known to me to be the persons described in and who executed the said foregoing instrument as parties thereto, and who duly acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

B. H. HEREFORD,

Notary Public, Pima County, A. T.

[SEAL.]

Filed and recorded at request of W., F. & Co. May 4, 1883, at 3.55 p. m.

A. T. JONES,

County Recorder.

(10c. int. rev. stamp, duly canceled.)

TERRITORY OF ARIZONA, } ss:
County of Cochise,

I, Frank Hare, county recorder in and for the county of Cochise, Territory of Arizona, do hereby certify that the above and foregoing instrument is a full, true, and correct copy of the deed of Jose M. Elias and others, named therein, to James M. Hall, as appears of record at pages 712, 713, and 714 of Book 4, Deeds of Real Estate, records of Cochise county, Arizona, and now in my office.

Witness my hand and official seal this 3rd day of May A. D. 1899.

[SEAL.]

FRANK HARE,

County Recorder, Cochise Co., A. T.

Endorsements: Certified copy of deed. Pl. Ex. 6.

In the Probate Court of the County of Pima, A. T.

In the Matter of the Estate of JOSE JUAN ELIAS, Deceased.

Order of Sale of Real Estate.

Santiago Ainsa, the administrator of the estate of Jose Juan Elias, deceased, having on the 13th day of October, 1880, presented to the judge of the probate court and filed herein a petition in due form, verified by his oath, praying for an order authorizing him to sell so much and such parts of the real estate belonging to the estate of said deceased for the purposes therein stated; and it having appeared to the judge of this court by said petition that it is necessary to sell the whole or some portion of the real estate, such petition was filed in October 13th, 1880, and thereafter, on the 13th day of November, 1880, at 10 o'clock a. m., and at the court-room of this court, said administrator appearing in person and James Buell appearing for the minor and absent heirs of the said estate and of said deceased—

Said matter coming on regularly to be heard this 13th day of November, 1880, at 10 o'clock a. m., and upon due proof to the satisfaction of the court of the due posting of copies of the said order to show cause in three of the most public places in Pima county, A. T., as required by law and the order of this court, at least four successive weeks before the day set for the hearing of said petition, and all and singular the law and the premises being by the court here seen, heard, understood, and fully considered, whereupon it is by the court—

Ordered, adjudged, and decreed that said Santiago Ainsa, administrator of the estate of Jose Juan Elias, deceased, be, and he is hereby, authorized to sell at private sale, either in one parcel or in subdivisions, as the said administrator shall judge most beneficial to said estate, the following real estate belonging to said estate at private sale, he judging it most beneficial to said estate, to the highest bidder, upon the following terms, to wit: For lawful money of the United States of America.

The following is the real estate hereby authorized to be sold, being situated in the said county of Pima, Territory of Arizona, and bounded and described as follows, to wit:

1st. One undivided third interest in the San Rafael del Valle grant, on the San Pedro river, three miles above Charleston, being one-third of 18,000 acres, more or less, of land as by survey of the United States surveyor's map.

2nd. One undivided third interest in the San Pedro grant on the San Pedro river, south of the San Rafael del Valle grant, unsurveyed and quantity unknown.

3rd. Four-ninths undivided interest in the Agua Prieta, Neidambacachi, and Santa Barbara grant, situated south of the Mule mount-

ains. This grant is situated, part in Sonora, Mexico, and part in the United States of America, in Arizona, but never having been presented for confirmation to the surveyor general of Arizona, it is not known how much of said grant is on the Arizona side and how many acres come under the jurisdiction of this territory.

Done in open court on the thirteenth day of November, A. D. 1880.

J. S. WOOD,
Probate Judge.

TERRITORY OF ARIZONA, }
County of Pima, } ss :

I, J. A. Anderson, Jr., clerk of the probate court of Pima county, hereby certify the foregoing to be a full, true, and correct copy of the "order of sale of real estate" made, filed, and recorded in the probate court of Pima county, A. T., in the matter of the estate of Jose Juan Elias, deceased, on the 13th day of November, 1880.

Witness my hand and the seal of said probate court this 30th day of April, 1883.

[SEAL.]

J. A. ANDERSON, JR., *Clerk.*

Endorsements: Probate court, Pima county. In the matter of the estate — Jose Juan Elias, deceased. Certified copy of order of sale of real estate. Filed Nov. 13, 1880. J. S. Wood, probate judge and *ex officio* clerk. Recorder's office, Tombstone, Cochise Co., A. T. Filed and recorded at request of W., F. & Co. May 1, A. D. 1883, at 3.40 p. m., Book 1, Orders Probate Court, pages 48. A. T. Jones, county recorder. Filed in the office of the clerk, court of private land claims, June 2, 1899. Jas. H. Reeder, clerk, by — — —, deputy. Pl. Ex. No. 7.

225

(PLAINTIFF'S EXHIBIT 8.)

In the Probate Court of the County of Pima, Territory of Arizona.

In the Matter of the Estate of JOSE JUAN ELIAS, Deceased.

Order Confirming Sale of Real Estate.

Santiago Ainsa, the administrator of the estate of Jose Juan Elias, deceased, having made to this court and filed in the office of the clerk thereof, on the 19th day of April, 1883, a return of his proceedings under the order of sale herein, duly verified by affidavit, and said matter, after due proof of due notice made and given as required by law, coming on regularly to be heard this 30th day of April, 1883, and the court having examined the said return and heard the testimony of witnesses in support thereof, and it duly appearing to the court that in pursuance of said order of sale said Santiago Ainsa caused notice of the times and place of holding said sale to be posted up in three of the most public places in the county of Cochise, A. T., in which the land ordered to be sold is situated, and

to be published in the Daily Citizen, a newspaper, printed in the Co. of Pima, and also in the Daily Epitaph, a newspaper, printed and published in the said county of Cochise, A. T., for two weeks successively next before such sale, in which order of sale and notice the lands and tenements to be sold were described with common certainty, as follows, to wit: One undivided one-third interest in the San Pedro grant, beginning at a point on the line which divides Mexico from the United States about one and one-half miles west from the place where the San Pedro river crosses the said boundary line, running thence in a northern direction about eleven miles to the southwest corner of the San Rafael del Valle grant, thence in an easterly direction along the southern line of the San Rafael del Valle grant ten miles to a monument of stones, thence in a southerly direction eight miles to a monument of stones, and thence in westerly direction about ten miles to the point of beginning, containing about 18,300 acres of land, being the same grant which was granted by the

226 Mexican authorities May 8, 1833, to Rafael Elias, grandfather of the said Jose Juan Elias, deceased, the title papers of which are now on file with the United States surveyor general of Arizona, reference to which is hereby made.

That at such sale James M. Hall became the purchaser of said estate for the sum of (\$3,825.00) three thousand eight hundred and twenty-five dollars, he being the highest and best bidder, and said sum being the highest and best sum bid, and all and singular the law and the premises being by the court here seen, heard, understood, and fully considered, wherefore it is by the court ordered, adjudged, and decreed that the said sale be, and the same is hereby, confirmed and approved and declared valid, and the proper and legal conveyances of said real estate are hereby directed to be executed to said purchaser by said Santiago Ainsa, administrator of the estate of Jose Juan Elias, deceased.

Done in open court this 30 day of April, 1883.

J. S. WOOD,
Probate Judge.

TERRITORY OF ARIZONA, } ss:
County of Pima,

I, J. A. Anderson, Jr., clerk of the probate court in and for Pima county, Arizona Territory, hereby certify the foregoing to be a full, true, and correct copy of the order confirming sale of real estate made and entered in said court in the matter of the estate of Jose Juan Elias, deceased, on the 30th day of April, 1883.

Witness my hand and the seale of said court this 30th day of April, 1883.

[SEAL.]

J. A. ANDERSON, JR., *Clerk.*

Filed and recorded at request of W., F. & Co. May 1, 1883, at 3.45 p. m.

A. T. JONES,
County Recorder.

(10c. int. rev. stamp, duly canceled.)

TERRITORY OF ARIZONA, }
 County of Cochise, } ss:

I, Frank Hare, county recorder in and for the county of Cochise, Territory of Arizona, do hereby certify that the above and
 227 foregoing instrument is a full, true, and correct copy of the order of probate, confirming the sale of real estate described therein by Santiago Ainsa to James M. Hall, as appears of record in Book 1, Orders of Probate, at pages 51, 52, and 53 thereof, records of Cochise county, Arizona, and now in my office.

Witness my hand and official seal this 3rd day of May, A. D. 1899.

FRANK HARE,
 [SEAL.] County Recorder, Cochise County, A. T.

Endorsements: Certified copy of order of probate. Pl. Ex. No. 8.

228 (PLAINTIFF'S EXHIBIT 9.)

In the Probate Court of the County of Pima, Territory of Arizona.

In the Matter of the Estate of JOSE JUAN ELIAS, Deceased.

Order Confirming Sale of Real Estate.

Santiago Ainsa, the administrator of the estate of Jose Juan Elias, deceased, having made to this court and filed in the office of the clerk thereof on the 19th day of April, 1883, a return of his proceedings under the order of sale herein, duly verified by affidavit, and said matter, after due proof of due notice made and given, as required by law, coming on regularly to be heard this 30th day of April, 1883, and the court having examined the said return and heard the testimony of witnesses in support thereof, and it duly appearing to the court that in pursuance of said order of sale said Santiago Ainsa caused notice of the time and place of holding said sale to be posted up in three of the most public places in the county of Cochise, A. T., in which the land ordered to be sold is situated, and to be published in the Daily Citizen, a newspaper printed in the Co. of Pima, and also in the Daily Epitaph, a newspaper printed and published in the said county of Cochise, A. T., for two weeks successively next before such sale, in which order of sale and notice the lands and tenements to be sold were described with common certainty, as follows, to wit: One undivided one third interest in the San Pedro grant, beginning at a point on the line which divides Mexico from the United States, about one and one-half miles west from the place where the San Pedro river crosses the said boundary line, running thence in a northerly direction about eleven miles to the southwest corner of the San Rafael del Valle grant; thence in an easterly direction along the southern line of the San Rafael del Valle grant ten miles to a monument of stones; thence in a southerly direction eight miles to a monument of stone, and thence in a westerly direction about ten miles to the point of beginning, containing about 18,300 acres of land, being the same grant which was

granted by the Mexican authorities May 8, 1833, to Rafael Elias, grandfather of the said Jose Juan Elias, deceased, the title
 229 papers of which land are now on file with the United States surveyor general of Arizona, reference to which is hereby made.

That at such sale James M. Hall became the purchaser of said real estate for the sum of (\$3,825.00) three thousand eight hundred and twenty-five dollars, he being the highest and best bidder and the said sum being the highest and best sum bid.

And all and singular the law and the premises being by the court here seen, heard, understood, and fully considered, wherefore it is by the court—

Ordered, adjudged, and decreed that the said sale be, and the same is hereby, confirmed and approved and declared valid and the proper and legal conveyances of said real estate are hereby directed to be executed to said purchaser by said Santiago Ainsa, administrator for the estate of Jose Juan Elias, deceased.

Done in open court this 30 day of April, 1883.

J. S. WOOD,
Probate Judge.

TERRITORY OF ARIZONA, }
 County of Pima, } ss:

I, J. A. Anderson, Jr., clerk of the probate court in and for Pima county, Arizona Territory, hereby certify the foregoing to be a full, true, and correct copy of the "order confirming sale of real estate" made and entered in said court in the matter of the estate of Jose Juan Elias, deceased, on the 30th day of April, 1883.

Witness my hand and the seal of said court this 30th day of April, 1883.

[SEAL.]

J. A. ANDERSON, JR., *Clerk.*

Endorsements: No. —. Probate court of the county of Pima. In the matter of the estate of Jose Juan Elias, deceased. Certified copy of order confirming sale of real estate. Filed April 30, 1883. J. A. Anderson, Jr., clerk. Recorder's office, Tombstone, Cochise Co., A. T. Filed and recorded at request of W., F. & Co. May 1, A. D. 1883, at 3.45 p. m., Book 1, Orders Probate Court, page 51. A. T. Jones, county recorder. Pl. Ex. No. 9.

This indenture, made the second day of April in the year of our Lord one thousand eight hundred and eighty-three between Jose Maria Elias, Manuel Elias, Santiago Ainsa, Estevan Ochoa & P. R. Tully parties of the first part and James M. Hall the party of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of twenty thousand dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said party

of the second part, and to his heirs and assigns forever, all our right title and interest in that certain piece or parcel of land situate in the county of Cochise Territory of Arizona described as follows: The land grant known as the "San Pedro" grant, beginning at a point on the line which divides Mexico from the United States about one & one-half miles west from the place where the San Pedro river crosses the said boundary line, and running thence in a northerly direction about eleven miles to the southwest corner of the San Rafael del Valle grant; thence in an easterly direction along the southern line of the San Rafael grant ten miles to a monument of stones; thence in a southerly direction eight miles to a monument of stones; and thence in a westerly direction about ten miles to the place of beginning containing eighteen thousand (18,000) acres of land more or less, being the same grant which was granted by the Mexican authorities, May 8th 1833 to Rafael Elias, grandfather of the Jose Juan Elias deceased, the title papers of which land are now on file with the United States surveyor general of Arizona, reference to which is hereby made for particular description, being all the land belonging to said grant lying and being in Arizona Territory.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

231 To have and to hold, all and singular, the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JOSE MA. ELIAS.	[SEAL.]
MANUEL ELIAS.	[SEAL.]
SANTIAGO AINSA.	[SEAL.]
ESTEVAN OCHOA.	[SEAL.]
P. R. TULLY.	[SEAL.]

TERRITORY OF ARIZONA, }
County of Pima, } ss:

On the 18th day of April, A. D. 1883, personally appeared before me, R. M. Wilkin, a notary public in and for the said Pima county, P. R. Tully, personally known to me to be the person described in and who executed the foregoing instrument as one of the parties thereto, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

[SEAL.] In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

R. M. WILKIN,
Notary Public, Pima Co., A. T.

TERRITORY OF ARIZONA, }
County of Pima, } 88 :

On this second day of April, A. D. one thousand eight hundred and eighty-three, before me, B. H. Hereford, a notary public in and for the county of Pima, personally appeared Jose Maria Elias, Manuel Elias, Santiago Ainsa, P. R. Tully, & Estevan Ochoa, whose names are subscribed to the foregoing instrument as parties thereto, known to me to be the persons described in and who executed the said foregoing instrument as parties thereto, and who duly acknowledged to me that they executed the
 232 same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and
 [SEAL.] affixed my official seal the day and year in this certificate first above written.

B. H. HEREFORD,
Notary Public, Pima County, A. T.

Endorsements: Jose Maria Alias *et al.* to James M. Hall. Deed, dated April 2nd, 1883. Recorder's office, Tombstone, Cochise Co., A. T. Filed and recorded at request of W., F. & Co. May 3, A. D. 1883, at 3.55 p. m., Book 4, Deeds R. E., pages 712. A. T. Jones, county recorder. Pl. Ex. No. 11.

233 (PLAINTIFF'S EXHIBIT 13.)

TERRITORY OF ARIZONA, }
Cochise County, }

Know all men by these presents that I James M. Hall in consideration — twelve thousand five hundred dollars to me paid by John M. Aston, the receipt of which I hereby acknowledge have granted bargained sold and conveyed and hereby do grant, bargain sell and convey unto said Aston his heirs and assigns forever an undivided one-half interest in & to all and singular my right title and interest in that certain *certain* piece or parcel of land situated in Cochise county, Arizona, described as follows, viz: The land grant known as the San Pedro grant beginning at a point on the line which divides Mexico from the United States about $1\frac{1}{2}$ miles west from the place where the San Pedro river crosses the said boundary line; thence running in a northerly direction about 11 miles to the southwest corner of the San Rafael del Valle grant the southwest corner. Thence in an easterly direction along the southern line of the San Rafael grant 10 miles to a monument of stones, thence in a southerly direction 8 miles to a monument of stones and thence in a westerly direction about 10 miles to the place of beginning containing 18,000 acres of land more or less, being the same grant which was granted by the Mexican authorities May 8th, 1833 to Rafael Elias grandfather of Jose Juan Elias, dec'd the title papers of which land are now on file with the United States surveyor general of Arizona, reference to which is hereby made for particular description being all

of the land belonging to said grant lying & being situate in Arizona. This conveyance is intended to convey an undivided half interest in above-described grant unto said Aston his heirs and assigns forever together with all and singular the rights tenements hereditaments & appurtenances to same belonging or in anywise incident or appertaining. To have and hold said undivided half interest in & to same unto said Aston his heirs and assigns forever.

The words "& to" line 12, page 1, interlined before signing.

234 Witness my hand & seal this October 27th, 1884.

JAMES M. HALL. [SEAL.]

Witness:

JNO. W. CONWELL.

TERRITORY OF ARIZONA, {
County of Cochise. }

On this 27th day of October, 1884, personally appeared before me, John W. Conwell, a notary public in and for said county, James M. Hall, known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

Witness my hand and official seal this 27th day of October, 1884.

[SEAL.]

JNO. W. CONWELL,

Notary Public.

Endorsements: Deed, James M. Hall to Jno. M. Aston, Oct. 27, 1884. $\frac{1}{2}$ int. in San Pedro grant. Recorder's office, Tombstone, Cochise Co., A. T. Filed and recorded at request of Jno. M. Aston Oct. 27, 1884, at 4 p. m., Book 7, Deeds R. E., pages 237-'8. A. T. Jones, county recorder. Pl. E. No. 13.

235

(PLAINTIFF'S EXHIBIT 15.)

TERRITORY OF ARIZONA, {
Cochise County. }

Know all men by these presents that we J. M. Hall and J. M. Aston in consideration of the sum of eight thousand three hundred and thirty-three $33\frac{1}{3}$ -100 dollars to us in hand paid by L. E. Gray the receipt of which sum is hereby acknowledged have granted sold and conveyed and by these presents do grant sell and convey unto said L. E. Gray an undivided one-third interest in and to that tract of land situated in Cochise county, Territory of Arizona known as the San Pedro grant: Beginning at a point on the line which divides Mexico from the United States about $1\frac{1}{2}$ miles west from the place where the San Pedro river crosses the said boundary line. Thence running in a northerly direction about 11 miles to the southwest corner of the San Rafael del Valle grant, the southwest corner. Thence in an easterly direction along the southern line of the San Rafael grant 10 miles to a monument of stones. Thence in a south-

erly direction 8 miles to a monument of stones, and thence in a westerly direction about 10 miles to the place of beginning containing 18,000 acres of land more or less, being the same grant which was granted by the Mexican authorities May 8th 1833 to Rafael Elias grandfather of Jose Juan Elias dec'd the title papers of which land are now on file with the United States surveyor general of Arizona, reference to which is hereby made for particular description, being all of the land belonging to said grant lying and being situated in Arizona. This conveyance is intended to convey an undivided one-third interest in our interest right and title to said premises, together with all and singular the rights tenements hereditaments and appurtenances to the same belonging or in anywise incident or appertaining.

To have and to hold said one-third interest in said premises to said L. E. Gray his heirs and assigns forever.

Witness our hands and seals this the 23rd day of May, 1885.

J. M. HALL. [SEAL.]
J. M. ASTON. [SEAL.]

Witnesses:

236 THE STATE OF TEXAS,)
Taylor County.)

On this 23rd day of May, 1885, personally appeared before me, Geo. W. Jalonick, a notary public in & for said county, J. M. Hall & J. M. Aston, both known to me to be the persons described in & who executed the foregoing instrument, who acknowledged to me that they executed the same freely & voluntarily & for the uses and purposes therein mentioned.

Witness my hand & official seal this 23 day of May, 1885.

[SEAL.] GEO. W. JALONICK,
Notary Public, Taylor County, Texas.

Endorsements: Deed, J. M. Hall & J. M. Aston to L. E. Gray. $\frac{1}{2}$ int. in San P. grant. May 23rd, 1885. Recorder's office, Tombstone, Cochise Co., A. T. Filed and recorded at request of L. E. Gray June 8, A. D. 1885, at 10 a. m., Book —, Deeds Real Estate, pages 3, 4. A. T. Jones, county recorder, by B. A. Fickas, deputy. Pl. Ex. No. 15.

237 (PLAINTIFF'S EXHIBIT 17.)

This indenture, made the 13th day of October in the year 1885 between John M. Aston James M. Hall and Leonidas E. Gray parties of the first part and the Reloj Cattle Company a corporation existing in the county of Cochise, Territory of Arizona, the party of the second part.

Witnesseth: That the said party of the first part for and in consideration of the sum of five dollars gold coin of the United States of America to them in hand paid do by these presents demise release and forever quitclaim unto the said party of the second part its suc-

cessors and assigns forever, all that certain tract of land situated in the said county of Cochise, Territory of Arizona, and more particularly described as follows: That certain Mexican land grant known and designated as the San Pedro grant. Beginning at a point on the line between the United States and the Republic of Mexico about one and one-half miles west from the point where the San Pedro river crosses said boundary line. Thence running in a northerly direction about eleven miles to the southwest corner of the San Rafael del Valle grant, S. W. corner. Thence easterly along the southern line of the said San Rafael del Valle grant ten miles to a monument of stone. Thence in a southerly direction eight miles to a monument of stones. Thence in a westerly direction about ten miles to the place of beginning, containing eighteen thousand acres of land, more or less being the same grant conveyed by the Mexican authorities May 8th, 1833 to Rafael Elias the title papers to which said grant are now on file with the U. S. surveyor general of Arizona to which reference is here made for more particular description, being all the land contained in said grant.

Also all and singular the following-described personal property, to wit: three thousand head of cattle more or less and about one hundred head of horses the same being all the cattle and horses now on the said San Pedro grant being the same stock owned and used by said parties of the first part in the conduct, management and business of said San Pedro ranche.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversions remainders rents issues and profits thereof.

To have and to hold all and singular said premises unto the said party of the second part and to its successors and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JOHN M. ASTON. [SEAL]
JAMES M. HALL. [SEAL]
LEONERDIS GRAY. [SEAL]

TERRITORY OF ARIZONA, }
County of Cochise, } 88:

On this 13th day of October, 1885, personally appeared before me, A. T. Jones, county recorder, by W. B. Hopkins, dep'ty, in and for the said county, John M. Aston, James M. Hall, and Leonidas E. Gray, personally known to me to be the persons described in and who executed the foregoing instrument, and who each acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.]

A. T. JONES,
County Recorder,
By W. B. HOPKINS, Dep'ty.

Endorsements: Deed from J. M. Aston *et al.* to Reloj Cattle Co., dated Oct. 13, 1885. Recorder's office, Tombstone, Cochise Co., A. T. Filed and recorded at request of Reloj Cattle Co. Oct. 13, A. D. 1885, at 11.45 a. m., Book 8, Deeds R. E., pages 223, '24, '25. A. T. Jones, county recorder, by W. B. Hopkins, dep'ty. Pl. Ex. No. 17.

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(PLAINTIFF'S EXHIBIT 24.)

San Pedro Land Grant.

My first knowledge of the San Pedro land grant was in October, 1884, when I was called upon to survey a town site south of the town site of Hereford. The town site of Hereford was laid out by the Neptune Mining Co., Wm. Herring, superintendent, who also instructed me in the survey of the *survey of the* town site to the south. My instructions were to commence on the south line of the town site of Hereford and lay out a town site one mile square, dividing it into blocks, lots, and streets. This survey was made in October, 1884. It has been always considered and believed that the town site of Hereford was laid out just south of the San Rafael del Valle land grant, and the latest Government maps of Arizona shows Hereford just south of this grant. E. J. Roberts lives upon this tract surveyed by me and claims this town site, but cannot say what title.

The next time my attention was called to the San Pedro land grant or "Rancho de San Pedro" was in January and February, 1887, when I assisted J. V. Bergen to survey what is known as the McManus tract of land, which tract of land takes in the San Jose Mts. and extends south to the divide on the "Ajos" mountains in Sonora, Mexico, and comes to the international boundary line between the U. S. and Mexico. Our headquarters were at Ochoaville with John S. Robbins, of the Whitbeck Cattle Co.

At this time Judge Pujol, att'y-at-law from Arispe, Sonora, and with him an att'y-at-law from Chihuahua, were at Ochoaville. (These att'ys had come there for the purpose of putting this tract of land (McManus tract) into the possession of the Whitbeck Cattle Co.)

On the evening of January 13th, 1887, having a copy of the San Pedro land grant, which being in Spanish, I asked these attorneys to give me an interpretation of the way in which this grant or tract of land was surveyed, and the following notes I took down in
240 my field book that evening and copy them just as they appear:

"OCHOAVILLE, Jan. 13th, 1887."

"With Judge Pujol and Spanish lawyer;" and having the description of the San Pedro grant, they translated and interpreted it as follows:

241

Translation of the Field-notes.

FRONTERAS, May 3rd, 1821.

18th day of May, 1821.—On the same day and month and year, being in the field and the interested parties and the promotor fiscal,

and the other ministers having so agreed, I caused a corner monument to be placed. The initial, from which a direction was taken

east

west

from the southwest to the northeast, on which course were measured and counted fifty cords the line terminating down the river from the house, on the bank of the river where there is a ford and rapids, at which point I placed a cross, from this point were measured and counted fifty cords the line terminating in the same valley at the skirt of a hill at a distance of three cords therefrom, at which point I caused a cor. monument to be placed, from which point were measured and counted fifty cords the line terminating in front of the "Sierra de Guachuca" at which point I caused a cross to be placed as a monument on a rocky hill, and from this point were measured and counted fifty cords the line terminating on a brushy mesa (table-land) where I caused a corner monument to be placed, and from this point were measured and counted fifty cords the line terminating in a "Cañada of Bachata," where I caused a cross to be placed as a monument being a corner on which to form the square of the tract surveyed, closing this side of the survey, the line being two hundred and fifty cords which makes two and one-half leagues. At this point setting the compass and a direction was taken from the ("nor weste" to the "sou este") northwest to the southeast, fifty cords were measured, the line terminating in the middle of the valley of the San Pedro river at which point I caused a corner monument to be placed. and from this point and in the same direction were measured and counted fifty cords the line terminating on the other side of the river at the skirt of a hill where I caused a cross to be placed as a monument, from this point the line was continued measuring and counting fifty cords the line terminating on the "Arroyo de Los Bais," at which point I caused a corner monument to be placed, from this point the measurement was continued fifty cords to a ("monte prieto") black mound or thicket where I caused a cross to be placed as a monument, from this point fifty cords were measured and counted the line terminating on the slope of a "picacho" (peak), where I caused a corner monument to be placed, this being the corner of the tract surveyed. This side being two hundred and fifty cords, which makes two and one-half leagues. And it being now late in the evening the measurements were suspended.

On the 19th day of the same month and year being in the field &c. &c. At the corner monument of the tract the compass was set and taking the direction from (northwest to the southeast) southwest, fifty cords were measured to a "monte," hill or thicket where I caused a cross to be placed as a monument, from this point fifty cords were measured to the ("Arroya del Malpais"), ground covered with black stone, where a corner monument was placed, from this point the measurement was continued measuring and counting fifty cords the line terminating at the ascent to a reddish table-land (mesa colorado) where I caused a cross monument to be placed, and from thence were measured and counted fifty cords the last terminating in the same mesa where was placed a corner monument, being the

corner of the tract surveyed. From this point taking the direction from the southeast to the northwest two hundred and fifty cords were measured, which make two and a half leagues, by which measurements were surveyed four square leagues for stock-raising.

NOTE BY THE TRANSLATORS.—It will be observed that from ignorance or carelessness errors have been committed by the surveyor in writing the courses by compass, in noting the distances measured, and also in relation to the form and area of the tract surveyed.

244 After getting the above description of this grant, went with J. V. Bergen, the attorneys, and others *went* to the lower end of the McManus tract and did not return until the last of January. On Tuesday, Feb. 1st, '87, went with Mr. Hise to the northwesterly slope of the San Jose Mts., and there found an old monument $3\frac{1}{2}$ feet at base, 2 ft. high, partially destroyed.

From which I took bearings to the prominent mountain peaks in sight. This is marked upon the accompanying map mon. No. 1.

The above monument is at the head of a wash, old mesquite all around it, draw or wash drains N. $49^{\circ} 30'$ W. This monument comes very near the point called for in the calls of the grant.

Having discussed the calls of this grant with J. V. Bergen several evenings, and having found the old monument on the N. W. slope of the "picacho," we decided that if that was the southeast corner of grant that the northeast cor. or the monuments described as being along the line leading to the N. E. corner could be found.

And on Wednesday, Feb. 2nd, '87, with four assistants, all on horseback, started northeasterly from ford and rapids, and at about $2\frac{1}{2}$ miles on Rocky hill found old monument, at 3 + miles on brushy mesa found old monument, and at 5 + miles on south bank of small wash found an old monument about 60 ft. south of wash; old monument about (6) six feet in diameter—very old monument. I placed upon the center stone a reddish boulder to make it more prominent; no other stone disturbed.

NOTE.—My object in taking these four assistants was to deploy, or, in other words, have two upon each side of me as far apart as we could see, so as to discover everything in the shape of monuments on the ground we rode over.

Wednesday afternoon, with the same assistants (all in the saddle), not having found the initial monument, we assumed the direction of the line toward the southwest, and about fifty cords crossed through a thicket and at about one hundred cords came to
245 ground covered with black stone and found several old monuments almost entirely destroyed, and at about one hundred and fifty cords came to the red table-land, but found no large monuments and returned.

On January 24th, '87, I took the following observations from an old monument on the east side of the San Pedro, below ford and

rapids, about 150 feet north from a large ash tree and 50 ft. from the river; from which high peak San Jose bears S. $40^{\circ} 20'$ E.; from which high peak Huachucas bears N. $85^{\circ} 50'$ W.

Mon. No. 2 on accompanying map.

Thursday, Feb. 3rd, '87, went to Rocky hill, and with transit over center of monuments took the bearing to the different peaks.

High peak San Jose Mts. bears S. $32^{\circ} 42'$ E. 16,511 meters.

High peak Huachucas bears N. $89^{\circ} 46'$ W. and others.

This is mon. No. 3 on accompanying map.

After taking the above went to the monument at the edge of brushy mesa, from which point I took the bearings to the principal peaks and ash tree at ford and rapids.

High peak San Jose Mts. bears S. $24^{\circ} 05'$ E. 18,430 meters.

High peak Huachucas bears S. $86^{\circ} 04'$ W.

This is mon. No. 4 on accompanying map.

After taking the above, went to the monument on the south side of wash supposed to be Cañada Bachata; from which bearings were taken to the different peaks and the ash tree on the river.

High peak San Jose bears S. $19^{\circ} 23'$ E.

High peak Huachucas bears S. $83^{\circ} 42'$ W.

This is mon. No. 5 on accompanying map.

Endorsements: San Pedro grant. Translation and field-notes of H. G. Howe. C. 10. Pl. Ex. No. 24.

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(PLAINTIFF'S EXHIBIT 25.)

H. G. Howe, U. S. deputy mineral surveyor and mining engineer.

TOMBSTONE, ARIZONA, *March 26th*, 1896.

Frank H. Hereford, attorney-at-law, Tucson, Arizona.

SIR: I send you by Wells, Fargo & Co., express, field-notes and translation of the San Pedro grant, also a map showing the location of the monuments found. You will see by examining the small blue-print map you received from Roskrige and sent to me that when he made the survey of the San Rafael del Valle grant he goes to the monument at the northeast cor. on my map, monument No. 5, and also goes to monument No. 3 on Rocky hill on his map, "Mon. on Stony hill," which he connects by course and distance to the S. E. cor. monument of the San Rafael del Valle grant, as he surveyed it. It seems to me that there ought to be no question about this being the northeast corner of the San Pedro grant. In 1887, when I discovered the above-described monuments, there is hardly any doubt but what I could have found many of the others had I taken the time, but at that time it was not considered necessary. Col. Herring or his surveyor must have had some data to start from, showing him the southerly end of the San Rafael del Valle, where he was to commence in laying out the town site of Hereford, and my instructions in laying out the town site south of Hereford. The same memoranda was expressed that governed the survey of the town site of Hereford. This was in 1884. Then in

1887 from an entirely different source. The N. E. cor. of the San Pedro grant is found on the bank of the Cañada Bachata, with other monuments leading to it, and especially from the ford and rapids, for this is the only ford and rapids for miles up and down the San Pedro.

It has been claimed by some that this grant laid entirely south of the international line. This is an impossibility, for what was known as the San Pedro custom-house claimed to be the San Pedro grant; there is no river and no Huachuca Mts. for a monument to stand in front of. It is my opinion that these are the monuments of the San Pedro grant as surveyed in 1821, and that a full and careful investigation will show other monuments and data that cannot be disputed.

After you have examined these I would like to hear what you think of this data.

Yours very respectfully,

H. G. HOWE.

Endorsements: H. G. Howe. March 26, 1896. C. 10. Pl. Ex. No. 25.

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(PLAINTIFF'S EXHIBIT 26.)

ANGEL ELIAS, a witness of lawful age, being produced, sworn, and examined on behalf of the petitioners, testified as follows, through the medium of the official interpreter:

Direct examination by Mr. WATERS:

Q. I understand you know something of the Elias family. I want you to state what you may know as to Captain Ignacio Elias Gonzales.

A. He lived in Arispe.

Q. Did you know the Ignacio Elias that was interested in the Babocomari?

A. No, sir; he was a brother of my grandfather and I did not know him.

Q. Was that the same or a different person from Captain Ignacio Elias Gonzales?

A. No, sir; one of them was Elias y Gonzales. There was two persons by the name of Ignacio. This Captain was surnamed Imichico to distinguish him.

Q. Did you know the children of Captain Ignacio Elias Gonzales?

A. I did not know any one except Dona Jesusita.

Q. Did you know Joaquin Elias?

A. Yes, sir.

Q. Whose son was he?

A. He was a son of Captain Ignacio Elias Imichico.

Q. Did you know Ignacio Santos Elias?

A. Yes, sir.

Q. Who was his father?

A. Captain Elias Imichico.

Q. Did you know Jose Maria Elias?

A. I did not know him, because he was killed by the Indian chief Tutuhe at the place called Boquillas, at Baquache.

Q. How do you know that?

249 A. From the family itself; from tradition. He was an officer in the army.

Q. Was he of the family to which you belong?

A. Yes, sir.

Q. Was he a son of the same Captain Ignacio Elias?

A. Yes, sir.

Q. Did you ever hear of Concepcion Elias?

A. I knew her.

Q. Is she living or dead?

A. She is dead.

Q. Was she a married woman when she died or did she die single?

A. She died single.

Q. Jesusita, whom did she marry?

A. She was a sister of Don Ignacio Santos Elias and Dona Concepcion. She was a daughter of Captain Elias. She married Don Felipe Perez.

Q. Did you know the children of Joaquin Elias?

A. Yes, sir.

Q. What were their names?

A. One of them is Angela and another Joaquina; and the man was Reynaldo.

Q. Whom did Joaquina marry?

A. She married Mr. Thomas Wallace.

Q. Did you know another Joaquin Elias?

A. Yes, sir.

Q. Is he living or dead?

A. He is dead.

Q. How long ago?

A. He died over 20 years ago.

Q. Do you know whether Mrs. Perez is living?

A. She is dead.

Q. Do you know whether she left any children?

A. She had one daughter; she is dead also.

250 Q. What was her name?

A. Mariana.

Q. Did she marry somebody before she died?

A. Yes, sir; José Maria Morales.

Q. Captain Ignacio Elias Gonzales, is he living or dead?

A. I do not know if there was a Captain Elias Gonzales.

Q. I am asking you about the father of these people you are telling about.

A. Captain Elias Gonzales Imichico, he is dead.

251 On February 9, 1899, it was stipulated in open court by counsel for the claimants in the following cases: *Hearst et al. vs. U. S.* (San Juan de las Boquillas y Nogales grant); *Camou vs. U. S.* (San Rafael del Valle grant); *Perrin vs. U. S.* (Babocomari grant), and by counsel for the defendants Christy and Cameron in

Green vs. U. S. (San Rafael de la Zanja grant), on the one part, and counsel for the Government on the other part, that the following testimony of the witness Angel Elias shall be received and considered in the cases mentioned, subject, however, to the right of any adverse claimants and defendants in said cases who are not now in court to repudiate the same, and that they shall be afforded an opportunity to cross-examine this witness, if they so desire.

ANGEL ELIAS, a witness of lawful age, being produced, sworn, and examined, testified as follows, through the medium of the official interpreter:

Direct examination by Mr. HENEY:

Q. Where do you reside?

A. In Fronteras, in Sonora.

Q. What is your business?

A. At present I am a farmer.

Q. How long have you been living at Fronteras?

A. Since the year 1863.

Q. When and where were you born?

A. I was born in Chihuahua. I do not recollect the date of my birth.

Q. How old are you?

A. Sixty years old.

Q. Did you ever live at this town of Tucson?

A. Yes, sir.

Q. How long ago was it or when was it?

A. In the year 1850 I came here as a soldier.

Q. Do you know where the town of Santa Cruz is in Mexico—in Sonora?

252 A. Yes, sir; I know it.

Q. When were you first at Santa Cruz, if ever?

A. In 1853 I went to Santa Cruz as commander of the company there.

Q. In what capacity were you in the army in 1850 at Tucson—in the Mexican army?

A. I was a corporal of an esquadra.

Q. During the time you were acting or enlisted in the Mexican army, from 1850 to 1854, did you pass over the country between Tucson and Santa Cruz?

A. Yes, sir.

Q. How many times?

A. Whenever it was necessary to render military service, because we were occupied between here and that place.

Q. Was it necessary very often to do that?

A. Continuously.

Q. And what was the service that was necessary to be performed so continuously?

A. To pursue the enemy whenever it became necessary and to pursue him to his strongholds.

Q. Who was the enemy?

A. The savage Indians.

Q. Were those the Apache Indians?

A. Yes, sir; the Indians that lived in the Chiracaqua and other mountains.

Q. What course did you generally take in going from Tucson to Santa Cruz in those raids after the Indians?

A. We pursued them to their strongholds, where it was necessary to attack them and to rout them.

Q. In going out from here, through what places would you pass between here and Santa Cruz?

A. We passed through Sonoita, through Babocomari, through San Pedro, and through other places where we considered we could take away from them the stolen property.

253 Q. Do you know a place called the Babocomari valley?

A. Yes, sir; I knew it.

Q. Did you know it from 1850 to 1854 by that name?

A. Yes, sir.

Q. Where is that valley?

A. That valley is between Tucson and Santa Cruz, to the south of the place where the railroad passes through Sonoita.

Q. Do you know where the town of Benson is, where you changed cars?

A. Yes, sir; I do.

Q. Do you know where the town of Fairbanks is?

A. Yes, sir.

Q. What grant, if any, did you know of in the vicinity of Fairbanks in those days—1850 to 1854?

A. I did not know at that time any other grants except the grants that were possessed by the original owners, the same being the Elias y Gonzales people.

Q. Did you know the Boquillas grant at that time?

A. Yes, sir. I knew it by the name of Las Boquillas y Nogales.

Q. Did you know the San Rafael del Valle grant at that time?

A. Yes, sir.

Q. Did you know the San Rafael de la Zanja grant at that time?

A. Also, yes, sir.

Q. Did you pass through all the four grants I have just mentioned between the years 1850 and 1854 in pursuing the Indians?

Hereupon the Government objected to the form of the examination as leading and because the question called for a categorical answer. Objection overruled.

A. I did; and I had several engagements with the Indians there.

Q. What was the condition of those grants as to their occupation from 1850 to 1854?

A. They were uninhabited on account of the Indians.

Q. Was there any stock upon them?

254 A. There were a few cattle and horses.

Q. On which grants?

A. At Babocomari; at Nogales, also called Boquillas; at San Pedro; at Palominos; at San Rafael, and all over that valley.

Q. Which San Rafael do you mean?

A. San Rafael del Valle.

Q. Were there any stock on the San Rafael de la Zanja at that time?

A. Also; there were a few cattle and horses.

Q. Describe fully the condition of that country in regard to the Indians and Indian raids from 1850 to 1854.

A. In 1850 the garrison town of Tubac and the garrison town of Fronteras and the immediate ranchos were uninhabited.

Q. Why?

A. On account of resources; because the government was not able to protect those people until about 1850. They began to protect them from the year 1850.

Q. Did you see any Indian raids or take part in any between 1850 and 1854 in that country? If so, state in detail how many Indians they were, in what number, and where they were, etc.

A. On the 18th day of June, 1852, I had my first engagements with the Indians right here at the old cemetery of this town, in command of my own company stationed at Tucson. In 1853 I went to command the post at Santa Cruz. I was assigned to the rank of sergeant and commander of that post. At that time I went out with eighty cavalrymen against a band of four hundred Indians, and attacked them at Palominos and took away four hundred cattle from them and forty horses, and I killed twenty-two Indians.

Q. When was that and where?

A. It was to the north of San Pedro about two or three leagues.

Q. North of the San Pedro river?

A. To the north of the San Pedro river.

Q. At which point?

A. It is near to the river—that is, where the old corrals and the old settlements were.

255 Q. Which ones do you speak of?

A. Palominos. At that place the ruins are still in existence where they corraled large numbers of cattle and stock.

Q. Where did you start from in going after these Indians?

A. From Santa Cruz. I was the commander at Santa Cruz.

Q. Was there anybody living then on the San Rafael de la Zanja?

A. No, sir; all of that place was abandoned.

Q. Do you know why there was no one living there?

A. On account of the war with the Indians.

Q. Wasn't it possible to live there?

A. No, sir; it was not possible, because the force to oppose them was very small.

Q. Was there anybody able to live in Arizona at that time outside of Tucson?

A. No, sir; not where they were not right under the military protection of the troops, except where they had means of protecting themselves.

Q. How many troops were there at Santa Cruz from 1850 to 1854?

A. There were only about fifty or sixty soldiers and also the neighbors who would help the troops in case of necessity.

Q. How many people were living at Santa Cruz at that time?

A. There could not be over four or five hundred in all, of all sexes and ages.

Q. Were they doing any farming at Santa Cruz then?

A. Yes, sir; they did so under the protection of the soldiers who would go out with them to protect them while they were plowing the fields.

Q. How far from the town was it safe to farm at all?

A. About half a league, and sometimes they were attacked even at the town itself.

Q. In what numbers—in how large bodies—did the Indians come to attack in those days?

A. Sometimes they came in large numbers and sometimes
256 they came in bodies of thirty or forty and attacked the place.

Q. Do you know where the custom-house of Palominos is, in Sonora, near the line of Cochise county?

A. No, sir; I have not gone there lately to that place. I was not here when that custom-house was established.

Q. Do you know where the custom-house is that is called San Pedro, with the Arizona line?

A. Do you mean the new custom-house?

Q. Yes, sir.

A. Yes, sir; I know the place called La Morita, and I myself came there personally to see the custom-house at La Morita.

Q. Do you know a custom-house at a place called San Pedro, west of La Morita, near the San Jose mountains?

A. Yes, sir.

Q. From that place where was this Palominos ranch or grant?

A. Towards the direction between the west and the north.

Q. What direction from San Pedro?

A. That is to the north of the San Pedro custom-house.

Q. Do you know where Jose Maria Elias lived in those days?

A. He lived at San Pedro.

Q. Is that the place where the Palominos ranch is?

A. No, sir; he lived at San Pedro.

Q. That Palominos ranch is north of that?

A. Yes, sir.

Q. Have you any interest in any of these grants that I have mentioned—the San Rafael de la Zanja, the San Rafael del Valle, the Babocomari, or the Boquillas y Nogales?

A. I do not have any interest, because, although I belong to that family, I do not know that I am connected with the ancestors, and I do not know about the titles.

Q. You do not claim to own any interest in these grants, then?

A. So far as I am concerned, I do not claim anything there, because I have nothing by which I could prove any property
257 in those places—that is, I let them remain to those that have the titles.

Q. Do you know where the present town of Charleston is?

A. Yes, sir.

Q. What was that place known as? What was its name between 1850 and 1854?

A. We used to call it San Juan de las Boquillas y Nogales.

Q. That is at the locality where the ruins of the corrals and houses are in existence now?

A. Yes, sir.

Q. When you first saw that place in 1850 were there any signs of occupation or habitation there; and, if so, what?

A. No, sir; I did not see anything except a few corrals and several mounds of stones that indicated they might have been the foundations of houses that were there.

Q. Describe these corrals.

A. These corrals were square corrals or corrals in a square form; they were adobe corrals, and the walls were somewhat high, coming up to my breast.

Q. How thick were the walls?

A. They were about ten inches thick.

Q. Did they show any evidences of ever having been used for cattle or horses?

A. Yes, sir; there was still a lot of manure there, indicating that they had used those places considerably.

Q. Did you see any signs of occupation on the Babocomari grant?

A. Yes, sir; there were some ruins of houses there yet.

Q. Where were they?

A. I thought you were asking me about Palominos, but there are also some corral ruins in Babocomari.

Q. Where are they?

A. They are opposite, a little to the left side of the monument—that is, near the sienega.

258 Q. What does the term Boquillas mean?

A. It means a place where arroyos or gulches come out, and at that place on the San Pedro river several arroyos come out and that is what is called Boquillas.

Q. What does Nogales mean?

A. It is a tree that bears nutmegs (the witness said nueces). There were some trees of that species there.

Q. What kind of nuts?

A. We call them walnuts or sweet nuts.

Q. Do you know what we call the walnut?

A. I think it is the same thing, but I do not know. I think it is the same nut I am now mentioning.

Q. Describe the nut.

A. It is very similar to what you call the walnut. We call it in Spanish las nueces de castilla.

Q. Were there any signs of occupation on the San Rafael del Valle grant?

A. No, sir; I did not see any. My impression is that, as the places adjoined the Rancho Palominos, I believe the corrals of Palominos were used by both places in common.

Q. Did you see any signs of occupation on the San Rafael de la Zanja?

A. Yes, sir; I knew San Rafael de la Zanja, and it was the property of the inhabitants of Santa Cruz, and they had some stock there also.

Q. What signs of occupation did you see on it?

A. They had some temporary farms there and some little corrals where they gathered their small flocks.

Q. Did you see any houses there?

A. Only those at San Rafael de la Zanja.

Q. Were there some at San Rafael de la Zanja?

A. Yes, sir.

Q. How many?

259 A. I do not remember how many there were. Some were in good condition and others in ruins.

Q. Did those in good condition give any evidence of having been occupied when you first saw them—occupied recently?

A. Yes, sir; they were occupied some until on account of the attacks of the enemy they would have to abandon them for some while until it quieted down. In the vicinity of those houses they killed some of our settlers.

Q. When was it they killed those?

A. In 1854 or 1855 they killed some people there. They killed the Eslavas and other people out there after horses and other neighbors out hunting their stock.

Q. Were the Mexican troops still in Arizona at that time?

A. No, sir; we had already taken away the companies here at Tucson so the United States troops could come in.

Q. Did you ever join with the American troops or do you know of the Mexican troops joining with the American troops at any time pursuing the Indians or fighting them in that locality after the American troops came in here in 1854?

A. When the American troops came here I was the commander of the frontier of Sonora and we had an understanding between the officers at Apache pass and Fort Buchanan to help each other mutually. So much so that when the Indian chief Cochise attacked the wagon train coming from El Paso to Tucson and he destroyed the train—destroyed *destroyed* the families and carried away about three thousand head of cattle—the commander at Apache pass pursued them with two hundred cavalry and overtook them between the Dragoons and the box cañon called La Sanceda or the Chiricauqua mountains.

Q. Those are in Sonora?

A. They are in Sonora. Seeing that he was pursued by the troops, the Indian chief ran into the mountains where the cavalry could not pursue him. Seeing he could not pursue the
260 Indians because he could not use his cavalry, the commander sent word to send him some troops. I was at Fronteras. When I received the dispatch from the commander I immediately ordered forty men to get ready and go in a hurry to the assistance of the American commander, sending word at the same

time to the American commander to please not attack the Indians, but wait for me until I could collect my infantry and go to his assistance. I was then gathering in my infantry. When the company of cavalry that I had sent reached the place they had already found that the lieutenant had been in a hurry and had already sent some scouts through the brush to attack the enemy. There were three men killed and one corporal of these American scouts. When my cavalry reached this place at night the enemy had already left this place after the attack. On the next day I arrived at the place with my three hundred infantry, which I had collected from my different posts; but when I reached the place the enemy was already gone. I forced marches to get there as soon as possible. Then I requested the American officer not to follow with his cavalry, but to let me follow the enemy with my infantry; but the lieutenant was urging that he was anxious to go with me. I replied to him that a body of cavalry like his would be of no use to me in the mountains; that I needed all infantry. He agreed to this, but still he urged me to take ten cavalymen and send three mules loaded with provisions with us. When it became dark I undertook my march over the mountains. I traveled all night, and in the morning I sent out my scouts to look out for the enemy. At about two o'clock in the morning the scouts returned and told me that the enemy was at the place called Cajon de los Pasos. In the early dawn I attacked the enemy. I took some of them prisoners. I took away the stock from the Indians and returned it to the commander at Apache pass. From that place I wanted to go straight to my post, but the commander urged me to stay with him, and I did so, and he treated me very well, and from that place I withdrew to Fronteras with my men.

Q. Where was this pass where the fight took place?

A. At the Chiricaqua mountains. It is the cañon coming down or emptying out from the mountains near the place where the old fort was. When there was a freshet in the arroyo at that place one of the lieutenants of that fort, by the name of Rucker, was drowned. I used to carry on very friendly relations with him, and I was sorry he was drowned.

Q. Where was the Apache pass from there?

A. It is above, in the mountains, on that side of the place we used to call Las Dadas.

Q. Did you know a Mexican officer named Leon who was killed out there somewhere?

A. Not at Chiricagua.

Q. Where was he killed?

A. Don Leonardo Leon was killed by the Indians of the chief Tutehe.

Q. When was that?

A. He was killed very shortly after Tutehe had started his rebellion.

Q. When was that?

A. He was killed a little time after—I do not know this except from tradition, I do not know it of my own knowledge—but he must

have been killed a little while after Father Robles was killed; about the year 1835. The same Indians who killed Father Robles killed Leonardo Escalante in going from Fronteras to Bacuache, called Puerto Mahavi.

Q. Was Leonardo Leon killed in battle?

A. Yes, sir.

Q. How many men were with him?

A. As I have been told by the old people who knew him well, he was at San Pedro with eleven men, and the message came to him from Babocomari that Tutehe had attacked the ranch. He sent a special messenger to Santa Cruz asking that the troops go to
262 their rescue, and in the meanwhile the captain started to see if he would meet his reinforcements. He started with his eleven men, and, not finding the troops he had sent for at the place he expected to meet them, he returned and attacked the enemy with his eleven men. The Indian chief had about four or five hundred warriors with him; but, notwithstanding this, the captain engaged them, and the eleven men were killed and so was he. They cut his head off and they took it with them. Tutehe, the Indian chief, who was besieging the ranch of Babocomari, knowing that Captain Leon was coming, went to rescue him and ran to see if he could rescue him, but on arriving at the spot he found that he had already been killed by the Indians. He grew very angry with the Indians because they killed him, and told them that that kind of a man should not have been murdered. Then he ordered that his body should be taken and placed in the shade of an oak tree, but he could not recover the head. This man being killed and Colonel Narbona being killed, the Indians extended their expeditions all over the State, very near to Guaymas. In 1851 Mr. Presquera was defeated by a body of Indians of about five hundred warriors, who were carrying with them, on their return trip from Sonora, about five or six thousand head of cattle from Guaymas and Hermosillo. Mr. Presquera went out against these Indians with about one hundred men, well armed, and waited at the place called Ojo Hediondo. That was the place through which the enemy had to pass. The Indians had not seen Presquera, who was already occupying his position ready to fire on them. The stolen stock they were carrying with them in separate herds. As the first party arrived, Presquera immediately engaged them and he took the stock away, and then he engaged the second, third, and fourth parties and took away the stock from them;
263 but the Indians, instead of running away, began to gather up in large numbers, and when the whole body of Indians was together they attacked him. He offered resistance to them during the whole day, and he had fifty of his men killed. They wounded twenty-five of his men and he himself was wounded and his horse was killed. Having fought all day, it was simply the darkness of night that enabled him to withdraw, taking his wounded with him and his other men. The Indians also gathered in their wounded and dead and collected the stock again and retreated, carrying all the stolen stock with them again.

Q. Did they get away with this stock?

A. Yes, sir; all of it; and they also took the spoils from the men who were killed in battle.

Q. When did you say that was?

A. In 1851; the month of January.

Q. Is that the Presquera who was governor of Sonora?

A. Yes, sir; this was before he was governor. He was a man of influence in the place and he urged the people to unite, and the commander of the forces sent him with federal troops.

Q. How far was that battle south of the present American line?

A. It is far; about twenty leagues.

Q. At the time of that battle, or between 1850 and 1854, at the time you had charge and you had battles with the Indians here, how were the Indians armed?

A. They were armed with all sorts of weapons. They had arrows and all sorts of firearms.

Q. What kind of rifles did they have?

A. They were armed with all sorts of arms, as I have stated before. Some of them were armed with these rifles that are muzzle loaders and others with repeating rifles and weapons that they had taken away from the people they killed. I would like also to say that in the year 1873 I was attacked, on the sixth day of March, by the Indians at San Jose, and I noticed they were very well armed
264 then with very fine rifles, and this I know because when they attacked me and I offered resistance they fought with a great deal of tenacity, and from that time on I noticed that the Indians were very well armed, because they had many Henry rifles. That was in 1873.

Q. Where is San Jose?

A. The bureau of organization of the military colonies of the State had just been gotten in order, and I had my forces armed with Winchesters, and at that place I fought a body of eighty Indians or more with twenty-two men.

Q. Where is that place, San Jose?

A. At San Pedro, at the little hill called Cerrito de San Jose.

Q. Where the San Pedro grant is?

A. Yes, sir. That same year the son of the Indian chief Cochise, having with him a body of men two hundred strong, attacked me at my farm and drove me from the hill near the farm.

Q. Describe the corrals that you saw at Palominos between 1850 and 1854.

A. They were square-walled corrals of a great capacity—corrals in which perhaps two or three thousand head of cattle might have been gathered in at a time.

Q. How far from Babocomari is the place where you had the fight with the Indians at the time you joined with the American forces?

A. It is far from Babocomari, towards San Pedro. I also fought the Indians at the place itself, at the place where the mule trains of Bisbe are at present. I defeated them many times there.

Q. Between 1850 and 1854?

A. No; it was after 1854. These latter engagements I have men-

tioned have taken place since the year 1860, and the engagements I had between 1850 and 1854 were here at this place, the Cienega de Heredia, and at San Pedro. In the year 1863 I was attacked at a place near Fronteras by a body of Indians two hundred strong. I was protecting a party of farmers there, and they attacked me and I engaged them and defeated them.

265 Q. Where did these Indians come from and where did they go to who had the fight with Presquera which you have described?

A. They used to come from these ranches here, these Chiricaquas, from all the mountains near Chiricaquas. They had no fixed habitation—they did not live at a fixed place.

Q. Are the regular Apache Indians and the Indians raiding through Arizona at the time you were here, from 1850 to 1854, the same tribe of Indians?

A. They were the same tribe.

Q. Were you ever on the eastern end of the Babocomari valley?

A. Yes, sir; many times.

Q. Did you see any monuments there or was anything ever pointed out to you as a monument or descriptive point or landmark of the Babocomari grant?

A. The old people showed me two monuments to the east side. One was that on a high hill, rocky hill, and the other is on the other side on a little round bald hill or mesa, and these the old settlers told me were the monuments. I did not know this personally. I had not been born when the place was settled.

Q. Do you know the north monuments of the Santa Cruz, the pueblo of Santa Cruz?

A. Yes, sir.

Q. Did anybody ever point out to you what was called the north center monument of the pueblo of Santa Cruz?

A. No. I only knew how far the land of the people of Santa Cruz extended according to the statements of the old people.

Q. Where did they say it extended to?

A. Up to the place called puerto de canelo.

Q. Did you know the San Rafael de la Zanja grant in those days?

A. Yes, sir; ever since I came to this frontier I knew it from the old people and from the neighbors.

Q. Where was that from Santa Cruz?

266 A. From the Santa Cruz it was towards the upper part, where the water—head streams—coming to Santa Cruz are.

Q. Who owned that grant?

A. As I have said before, I understood that the owner of all that tract was all the inhabitants of Santa Cruz; they bought their titles.

Q. So the people of Santa Cruz were claiming to own it and use it, were they?

A. Yes, sir; they occupied them until a large number of them sold their property.

Q. Were the boundaries told to you at that time by anybody in Santa Cruz, between 1850 and 1854?

A. When I came to Santa Cruz and began to travel over the country, I would be told occasionally by the people, "Here is the end of this man's land, and there is the boundary of that man's land." I came to Santa Cruz when it was quite young.

Q. Where did they tell you the boundaries of the San Rafael grant were, if at all?

A. They told me the boundary line was at the puerto del canelo, sloping towards the Babocomari, but except this they did not tell me where they were.

Q. Who was killed at the same time Padre Robles was killed?

A. Don Leonardo Escalante.

Q. Was there an Elias killed at that time?

A. Jose Maria Elias, Imichico.

Q. That was in what year?

A. I cannot remember now; as I said before, when Father Robles was killed. It was about in the year 1833. But I know as to these things because they were related to me.

Q. Where was it Father Robles and Elias were killed?

A. He was killed at the place called Puerto de Mahavi, together with Don Escalante, and the officer Jose Maria Elias was killed at Los Nogales. He was killed at that place by Tutehe.

267 Q. Jose Maria Elias was at that time the paymaster of the Mexican troops at Tucson?

A. Yes, sir; he was the son of the first one I have mentioned. He was paymaster here and the son of the other Jose Maria Elias mentioned by me a little while ago. He also was killed by the Indians at Santa Cruz.

Q. How far was that pass where Robles was killed from the Babocomari ranch?

A. It is far; perhaps twenty or twenty-five leagues.

Q. It is down in Mexico?

A. Yes, sir.

Q. Do you remember the circumstances connected with the killing of that Elias? I will ask you whether you remember the circumstances connected with the killing of Escalante.

A. Yes, sir; when the Indian Tutehe used to live at Bacuache, on account of some quarrel about some horses, he had a fight with Leonardo, and in the fight Leonardo struck him with his whip and put out one of the Indian's eyes. When the Indian saw that he had lost his eye he swore vengeance against Leonardo. After a while he succeeded in having the Indian settlements around those places engaged in rebellion with him. After having revolted he began to make his incursions with the Indians, especially into the frontier. During one of his inroads he met Leonardo and Father Robles, and at the Puerto de Mahavi he seized both of them, and then he told Leonardo, pointing to his eye, "See that eye," and then he ordered that both of his eyes be put out, and after his eyes were put out he ordered that the palms of his hands should be scraped, and then he had him castrated, and, Father Robles standing by, the poor fellow used to ask him to help him, but the Indian chief Tutehe was telling him to go away. The priest, hearing the cries of the poor

268 man in his anguish, would return to help him. And then the soles of his feet were scraped, and after this operation was performed they compelled him to walk for about one hundred varas. Finally, the Indian succeeded in having Father Robles go away, but as these Indians were there about the place in large numbers, when he had traveled about one hundred yards, the priest was caught by some Indians of the party, who killed him. Then the military forces went after the Indians until they succeeded in driving them back here.

Cross-examination by Mr. POPE:

Q. You spoke of the Palominos. Is that at the present time in Mexico or in Arizona?

A. It is in Arizona.

Q. At what place?

A. I do not know at what place in Arizona, but it is near the boundary line.

Q. What river was it near?

A. The houses are near the boundary line.

Q. How far from the boundary line?

A. I cannot state exactly how far they are from the line, because I have not returned there to see the monuments as they stand there now.

Q. When were you there?

A. I have not been at Palominos for a long time. I ceased traveling over that country before the line was readjusted.

Q. When was that; when was it readjusted?

A. I think it was two or three years or four years—I think you are better posted on that than I am.

Q. Two, three, or four years ago?

By the INTERPRETER: He says the monuments are established there, and you ought to know.

Q. Is this ranch on or near any river?

A. It is at the edge of the River San Pedro that runs to Charleston.

Q. Do you know where the present place of San Pedro is in Mexico?

A. It has been where it always has been—at the old ranch of San Pedro.

Q. Is that in Mexico or in Arizona?

A. It is in Mexico.

Q. How far from the boundary line?

A. It is about three or four leagues.

Q. Is that where the old ranch-house is?

A. Yes, sir; there are some old houses and old granaries still left there.

Q. How far as the ranch of Palominos from that place?

A. I have said that it is about two or three leagues distant.

Q. In what direction?

A. That is downwards on the stream, running to the north.

Q. And you say San Pedro is three or four leagues from the line?

A. That is what I estimate. The monuments are there in view now. They are iron monuments. It can be very well estimated, because nobody would dare to take them off. It is not practicable to say what the distance is from one point to another, unless a man goes out and walks over it.

Q. The ranch of Palominos is north from San Pedro and down the river from it?

A. Yes, sir.

Q. How far down the river does it extend? Isn't it true that it extends down to Charleston?

A. I do not know, but I think not, because it is at the ranch of San Rafael del Valle, and beyond it is the monuments that mark the boundary between the ranch of Palominos and San Rafael del Valle.

Q. When did you first know the ranch of Palominos?

A. Since the year 1850 I have been acquainted with all these lands, and I have repeated already that it is since the year 1850 that I have traveled over these places and know those lands.

By Mr. HERRING (to the interpreter): Didn't he say that the ranch of Palominos did not reach to Charleston because the San Rafael del Valle was between?

270 By the INTERPRETER: No, sir; that is not my recollection.

Q. How close is Palominos to Santa Cruz?

A. I do not know positively. As I have gone over these lands in a hurry, and almost always at night, I cannot estimate how far it is.

Q. Then most of your travel has been by night over these lands?

A. The greater portion by night and always in a hurry, because otherwise I would not have attained the object of my mission—that is, to combat the enemy. If I had undertaken to perform these duties during the day I would not have achieved my object, and I would lose my sleep and have my troops lose their sleep, and thus would not accomplish my object.

Q. When you went through that country you were usually in a hurry?

A. Yes, sir; as it was necessary. Sometimes I would go out with my infantry and sometimes with my cavalry from La Cañonia, and we would attack the enemy at Las Mulas.

Q. You spoke about having killed twenty-two Indians?

A. Here at Palominos, between Palominos and San Pedro, where the Indians had killed a man, I was pursuing them to take away some stolen stock they had carried with them. I attacked them and beat them at Palominos and killed twenty-two men.

Q. What year was that?

A. In 1853; the same year I went from here to command at Santa Cruz.

Q. You say you killed twenty-two men?

A. Yes, sir.

Q. Did you kill them personally, or did the people with you kill them?

A. No, sir; I could not kill them myself. My men killed them. I commanded my men and they followed my orders. I gave my orders to my men and would direct the battle and see that my positions were secure.

Q. How many men did you have under you then?

A. I had eighty cavalrymen.

271 Q. What was your military office at that time?

A. I was first sergeant, commanding the company at Santa Cruz, and there my appointment came as first ensign of the company at Santa Cruz.

Q. What year was it you got your commission as first ensign?

A. That same year; in 1853, after this engagement at Palominos. It was sent to me by Santa Ana.

Q. He was president at the time?

A. Yes, sir.

Q. You live now where?

A. In Fronteras, Sonora. That was an old garrison town.

Q. How far is that from the international boundary?

A. It is about twenty-two or twenty-three leagues.

Q. How did you happen to come up here to Tucson in this case?

A. I was asked from here.

Q. Mr. Camou came for you?

A. Yes, sir.

Q. Do you know Juan Pedro Camou, of Guaymas?

A. Yes, sir; I know him.

Q. He is a claimant of the San Rafael del Valle grant?

A. That is what I also understand.

Redirect examination by Mr. HERRING:

Q. What is the land called between Palominos and Charleston on the San Pedro river?

A. That is what is called San Rafael del Valle. It is what they call now San Rafael del Valle. I knew it as Palominos, but they call it San Rafael del Valle, and I suppose it is the same place.

Recross-examination by Mr. POPE:

Q. When you were down there you understood what is now San Rafael del Valle to be the same as Palominos?

A. That is what I always understood as far back as I have any recollection.

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(PLAINTIFF'S EXHIBIT 27.)

OFFICE OF SURVEYOR GENERAL,

TUCSON, ARIZONA, August 27, 1895.

I hereby certify that the paper attached hereto is a correct copy of the paper it purports to be a transcript of, on file in this office.

LEVI H. MANNING,

U. S. Surveyor General, District of Arizona.

[SEAL.]

25—204

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TUCSON, ARIZONA, *January 31st, 1887.*

Hon. John Hise, U. S. surveyor general.

SIR: Under your instructions of date January 12th, 1887, I proceeded by private conveyance to the settlement of Ochoaville, "Palominas," stopping the night of the 13th at Benson. The next day I proceeded to Fairbanks, a town on the Sonora railroad; also the point where the Tombstone stage connects with said road. On the morning of the 15th I left this place for Tombstone, where I remained five days, examining records and getting any and all information possible concerning the so-called *San Pedro grant*. While there I obtained from the county recorder a transcript of transfer from Jose Ma. Elias *et al.* to James M. Hall of all their interest in said *San Pedro grant*, which I hand you herewith.

I also, as I had previously supposed, came in contact with many persons who professed to know a great deal about land grants in general, but more especially about the one in question. It was more than amusing to hear some of them. There is not a land lawyer in either Mexico or the United States who could hold a candle to them—no, not even history itself—that is, if one took in all they had to say.

Leaving Tombstone on the 20th and arriving at Ochoaville the same day, where I met an array of ability and genius not often met with in this country, especially in such an out-of-the-way place, here I spent several days in riding over the country, examining monuments, & etc. I found several, but what they are and what they designate I am at present unable to say. There are monuments there without doubt; also a natural landmark, a peak (*picacho*)—yes, more than one, some two or three—the field-notes in the *San Pedro* title calling for a terminating or corner point at (*el disalcado del picacho*) the slope of the peak. During my stay here I learned nothing that could enable me to determine the exact location of the so-called *San Pedro grant*.

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On the evening of the 23rd I left this field of investigation and went to the place known as *San Pedro*, at which place the Mexican custom-house is *is* situated. There I met Don Manuel Elias, one of the heirs to said grant. I conversed with him to some considerable extent, and was informed by him that his brother, Don Jose Maria Elias, had gone to Guaymas on some land business, the nature of which he, being the better judge, did not disclose. I also made it a point to question him about the *San Pedro grant*, as to its location, & etc., but all I could get out of him was that it all was the *San Pedro grant*, meaning, I suppose, from south of where he at present lives to as far north as Charleston, about 30 miles. This, he said, was what his grandfather and father had told him, but that he knew nothing himself about it, except *but* by hearsay, but claiming at the same time that the place where he lived was named "*San Pedro*," and the place at Ochoaville was named "*Palominas*," the latter place, I think, was reoccupied by Tully, Ochoa & Co. in 1877 or 1878.

In regard to the place called *Las Nutrias* (the Beavers), it is said

to be situated south of the custom-house at San Pedro. There, it is said, still exists some very old ruins. This word or place is also mentioned in the field notes of the San Pedro grant, as well as the "Cañada de Bachata." Don Manuel Elias told me that he did not know himself, but that he had been told that it was located some place in the Mule mountains, and that there was no Cañada de Bachata near the place of San Pedro, meaning the place where he at present lives.

I conversed with him relating to there being two San Pedro grants, but he did not appear to know anything about the existence of more than one. Upon this point further and more complete investigation should be made, as there appears in the proper archives in Mexico the existence of 2 grants named San Pedro, one of 3 leagues and one of 4 leagues, both claimed by some of said Elias family, as reported to your office in 1879 by late Special Agent R. C. Hopkins, a record of which you have.

275 What I considered a discrepancy in the certified copy of the original title papers concerning the situation of said grant being given in the jurisdiction of Fronteras and the jurisdiction of Santa Cruz was explained to me by two very intelligent gentlemen, one a lawyer of the highest standing in the city of Chihuahua and the other the judge of Arispe, Sonora, Mexico, and their explanation is as follows:

Fronteras had jurisdiction over all civil proceedings, and the parties petitioning for land in this section were compelled to petition the officers of this place. While the land was in this instance really situated within the military jurisdiction of the presidio of Santa Cruz, which place is situated about $\frac{1}{2}$ way between the present places of Contention and Fair Banks, the ruins of same being still visible from the road. This I think explains the mentioning of both places in the title papers.

While at the custom-house at San Pedro, I learned from Don Manuel Elias that he has only been living there about two years, but that his brother, Don Jose Maria Elias, had resided there for the past nine years, and that if he was only home he could give me some desirable information on the subject of the San Pedro grant. San Pedro being the place where I was to meet a certain gentleman mentioned in your instructions, and having now spent a week in this vicinity, hearing nothing from the office nor the gentleman mentioned, which I regret very much, as I could in all probabilities — gained some information from him which might have been of value to you in making your report on this matter to the department at Washington. There being nothing more to be done at present, I returned to Tombstone and upon arriving there found news from the office stating that the gentleman before mentioned would be at San Pedro on or about the 27th inst. I at first said return by all means and see him, but after considering the circumstances and the shape this case had assumed more fully, I concluded to let the matter rest for the present and return to Tucson.

As to the abandonment and re-establishment of San Pedro,
276 I could obtain no information on this point that I considered reliable. I was told that the Elias family abandoned the place

in the year 1846 and removed to "Santa Cruz" on account of the hostilities of the Apache Indians. As regards their returning, I was told by some that they never returned until a few years ago, and by others that they returned from time to time and remained as long as the Indians permitted them to do so.

Don Manuel Elias also informed me, when questioned about monument marking the boundaries of the land, that there *was* very few, if any, as the Apaches destroyed them, as well as the houses, during their raids, claiming that the country belonged to them and not the Mexicans.

I will say in conclusion that according to the field-notes of what purports to be a copy of the original title papers that they would fit at most any point along the San Pedro river for a distance of 25 miles, and probably more, and, further, I shall take the liberty of saying that either the rightful owners of these grant-burdened lands are being defrauded or restrained of their rights under the treaty or the citizens of the United States who are entitled under the laws of the United States to acquire and retain possession are being aggressively humbugged and in some cases robbed. Probably both these instances exist in different instances.

Having accomplished all that can be done at present under my instructions from you, dated Tucson, Jan'y 12th, 1887, as is set forth in the foregoing report in relation to the investigation of said grant.

The same is respectfully submitted.

THOS. A. BORTON.

(Endorsed as follows: "Report of investigation in the matter of the San Pedro private land claim. Specialist sent by the surveyor general to the San Pedro.")

Endorsements: Copy report of Thos. Borton. Pl. Ex. No. 27. San Pedro.

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PLAINTIFF'S EXHIBIT No. —.

(18.) C. No. 3, F. No. 20. No. 4.

Translation of Title of Grant to Four Square Leagues of Land, 17,755.44 Acres.

EXHIBIT (LAND COURT) 32.

Filed September 1st, 1879. John Masson, U. S. surveyor general.
Journal, vol. 1, pages 29-38.

Filed in the office of the ct. pt. l'd claims July 22, '92.

JAMES H. REEDER, *Clk.*

By IRENEO L. CHAVES, *Deputy.*

278 Title of grant to four square leagues of land included in the place of San Rafael del Valle, in the jurisdiction of Santa Cruz, issued by the treasurer general of the State of Sonora in favor of the citizen Rafael Elias Gonzales.

NOTE.—By the office of the surveyor general the square league is estimated as 4,438.68 acres; consequently four square leagues = 17,755.44 acres.

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Second seal.

One dollar and a half for the years 1831 and 1832.

Jose Ma. Mendoza, treasurer general of the free, independent and sovereign State of Sonora:

Whereas, article 11, of the sovereign decree, No. 70, of the general congress of the union, dated on the 4th of August 1824, concedes to the States, the revinues which are not reserved to the confederation; one of which are the lands in the respective districts, to which they belong, in consequence thereof, for the disposition of which lands, the honorable constituent Congress of the States of Sonora and Sinaloa, passed the law No. 30 of the 20th of May, 1825, and also the succeeding legislatures passed other decrees in relation thereto; and the citizen, Rafael Elias, of the vicinity of this capital, having on the 12th of March, 1827, made formal denouncement before the treasurer general of the State, of the land named San Rafael del Valle, situated in the jurisdiction of Santa Cruz (presidio of) the same was admitted according to law on the 1st of July of the same year, and the petition of denouncement, decree of commission and proceedings in obedience thereto are as follows:

To the treasurer general:

I, Don, Rafael Elias, before your honor appear and stop: That, needing lands for my stock I denounce the vacant tract, that adjoins the rancho of San Pedro, in the jurisdiction of Santa Cruz, as far as the place of the Three Alamos obligating myself to pay to the nation

the corresponding taxes, and to do all other things that may be justly required, in order to acquire a title to said lands, and a confirmation thereof; wherefore, your honor will be pleased to consider said land as registered and denounced as vacant.

280 Wherefore, I pray your honor to be pleased to provide as I have asked, in which I will receive favor.

Arispe, March 12th, 1827.

In the absence of Don Rafael Elias :

JOAQUIN ELIAS.

COSALA, *July 1st*, 1827.

The alcalde of Santa Cruz, by virtue of the authority conferred upon him without prejudice to third parties, who may have a better right, and previously summoning the owners of the adjoining lands, will proceed to the survey, appraisement and publication for thirty consecutive days, of the lands described in the foregoing denouncement, acting in all things, in accordance with the sovereign decree of the honorable constituent Congress of the State, No. 30, of the 20th of May, 1825, and the regulations accompanying the same; and when these proceedings shall have been taken, the same shall be transmitted to this treasury office, publishing a notice of the public sale, to be made at this office, after the three public offers have been made, according to custom. The treasurer gen'l of the State, Nicolas Maria Gagiola, thus decreed and signed.

GAGIOLA.

At the presidio of Santa Cruz on the 20th day of the month of August, 1827, in obedience to the decree of the senior treasurer general of the State, Don Nicholas Maria Gagiola, with citation of the interested parties, and the colindantes, if there should be any, and accompanied by the other officers necessary, which will be appointed for that purpose, I shall proceed to the rancho of San Pedro, for the purpose of surveying the lands that have been denounced, that is to say the lands pertaining to the citizen Rafael Elias, which measurements are to be made separately from those that are made for the other partners in the denouncement, as shown by the copy of the document with which these proceedings commence. The citi-

281 zen Pablo Trago, constitutional alcalde of the presidio of Santa Cruz; thus determined, ordered and signed, before the assisting witnesses, in the absence of a notary public, according to law.

PABLO TRAGO.

Assistant :

SATURNINO LIMON.

Assistant :

JOSE MA. SOTELO.

Whereupon, the alcalde commissioned, proceeded to the appointment of a counter, marker and measurer, who were the citizens Matencio Nena, Francisco Sandoval, Ipi, Samaniego, Manuel Soto and Camilo Arvizu, who accepted said appointment, and made oath,

that they would discharge their trusts loyally and faithfully, and with citation of the interested party and the co-hi-dantes, the alcalde made the measurements, as shown by the following proceedings.

At the place named San Rafael, on the 21st day of the month of August, 1827, I, the said judge and surveyor, for the purpose of commencing the survey of the lands denounced by the citizen Rafael Elias, delivered to the officers, a cord well twisted and greased, and a Castillian vara, with which they measured and counted on said cord, fifty varas; and when this was done they attached a lance to each end of said cord, and in presence of the interested party, the measurement was commenced at a point, selected as the center, which was at some hills; and running south there was measured and counted two hundred cords, the line terminating at the line of the rancho of San Pedro, granted to Don Jesus Perez, and in his name, was present the administrator of said rancho with documents showing that his measurements extended to that point; the monument of which, existing at that place, being the boundary of both parties interested.

Returning to the center, the line was run to the north, measuring and counting two hundred cords; the line terminating in the same valley, at a point at which there is a small limy hill; at which place I ordered a mound of stones and cross to be placed, as a sign for a monument.

282 Returning to the center, fifty cords were measured and counted towards the east, the line terminating in the valley, in front of the Sierra de las Mulus, at which place a mound of stones was placed as a sign for a monument.

Returning to the center, the measurements were continued towards the west, measuring and counting fifty cords, the line terminating in the same valley in front of the Cordillera of the Sierra de Guachuca, at which place a mound of stones was placed, as a sign for a monument; whereupon, one hundred cords being measured at the southern and northern extremity, the tract was squared, and the corresponding landmarks placed at the corners thereof; the tract thus measured containing four square leagues, in favor of the citizen Rafael Elias, with which he was satisfied, and was considered as having received said lands; he being informed that in due time, he was to mark all the boundaries thereof, by monuments of rough stone and lime, as required by law. In witness whereof I make this entry in the proceedings, and sign the same, with the said Elias, and with the assisting witnesses, in the absence of a notary public, according to law, the other officers not signing because they could not write.

PABLO TRAIJO.
RAFAEL ELIAS.

Asst.: SATURNINO LIMON.

Asst.: JOSE MA. SOTELO.

Whereupon the alcalde proceeded to the corresponding valuation of the land, by intelligent experts, who were the citizens Manuel Soto and Camilo Arvizu, who after having made the usual oath, according to their practical knowledge, in accordance with the laws on the sub-

ject, valued the four square leagues at the sum of \$240, at the rate of \$60 each, for the reason, that they contained running water; at which valuation, the alcalde made publication of the same for
 283 thirty consecutive days, from the 30th of August, 1827 to the twenty-eighth of September of the same year; and no purchasers appearing, the expediente was concluded on the 30th of the same month, and with a citation to the interested party, the same was forwarded for sale at public auction by the office of the treasurer general; which by decree of the 7th of February, 1828, referred the same to the attorney general, whose report thereon is as follows:

To the treasurer general:

This is an expediente made upon the measurement of four square leagues, executed by the alcalde of the presidio of Santa Cruz, in favor of the citizen Rafael Elias, which tract of land is named San Rafael, and was valued at the sum of two hundred and forty dollars, by persons appointed for that purpose, being sold for said sum to the interested party.

The attorney general might pass some censures on the proceedings herein; but as they are unimportant, they are omitted; he is, however, surprised to find, that the measurements were made without the assistance of the needle, since this instrument is indispensable in determining the courses run; but inasmuch as it would be productive of grave prejudice to the interested party, to require the land to be remeasured, for want of this requisite, the attorney general is of the opinion, that if there be no objections by third parties, this omission may be excused, and that the land may be adjudicated with the corresponding formalities, as required by law.

This is my opinion.

Concepcion de Alamos, February 7th, 1828.

MANUEL DE LA BRENA.

And the office of the general treasurer having approved the report of the attorney general, made a decree on the 16th of April, 1828, for the three public offers on the same day 16, 17 & 18,
 284 asking bidders and none appearing, the four square leagues of land in the place of San Rafael del Valle, denounced, sold to the citizen Rafael Elias, as is shown by the proceedings of the third offer, which is as follows:

In said city, on the 18th day of the month of April, 1828, the board of sale having met, composed of the senior president and members, they proceeded to make the last offer of sale of the four square leagues of land described in this expediente, making the offer in the same terms as the first was made, with the sole addition that as this time the sale was to be effected; and the hour of 12 o'clock now having arrived, without any purchaser appearing, the last offer was made: "Once! twice! three times! Going, going, gone! Sold to Don Rafael Elias."

Whereupon this act was concluded, the four square leagues being published and solemnly sold to the interested party, for the sum of two hundred and forty dollars, at which the same had been valued.

In witness whereof this entry is made in the proceedings and signed by the senior president and members of the board of treasury, and also the agent who was Don Filarcio Gomez Gajiola Gomez Urrutea Filarcio Gomez.

I, Nicolus Maria Gajiola, treasurer general of the revenues of the State of the West, certify: That on folio 14 of the corresponding book, in the office of this treasury, for this year, is found the following entry:

"Charged to grants of land, two hundred and forty dollars, deposited by Don Filarcio Gomez in the name of Don Rafael Elias, a resident of Arispe, for a grant of four square leagues of land in the place named San Rafael del Valle, in the jurisdiction of the presidio of Santa Cruz; each square league having been valued at sixty dollars, for the reason that they contain running water, which were sold at public auction to said Elias, by the board of sale in this capital on the 18th day of the present month. \$240.

FIBURCIO GOMEZ.

GAJIOLA."

285 In witness whereof, I give this at Alamos on the 21st day of April, 1828.

NICOLAS MA. GAJIOLA.

The original of this certificate being annexed to the expediente, the same is concluded with all the formalities required by law and filed in the archives of this treasurer's office, as a perpetual testimony.

Wherefore: By virtue of the authority conferred on me, by the laws; by these presents, and in the name of the sovereign State of Sonora, I confer, in the form of law, a grant of four square leagues in the place named San Rafael del Valle, in the jurisdiction of the presidio of Santa Cruz, to the citizen, Rafael Elias, of this capital, to whom I give and adjudicate, said land as a sale, with all the firmness and solemnity required by the laws, for himself, his children and successors, with all its entrances, exits, uses, customs, servitudes, forests, woods, pastures, waters, springs and watering places, and other privileges belonging thereto; under the express condition that he keep the same stocked, without at any time abandoning the same; and if they be abandoned totally, for three consecutive years, and should be denounced by any one else, and then be declared vacant, they shall be adjudicated again to the highest bidder; excepting, however, such cases as where the abandonment has been caused by the invasion of enemies; and then only so long as such cause may exist; strictly requiring the said citizen, Rafael Elias, and his heirs and successors, to subject themselves to the extent and boundaries mentioned in the proceedings of survey; observing and exactly fulfilling article 30 of law No. 20 of the 20th of May, 1825, which obligates them to place on the boundaries of said lands, monuments of rough stone and lime, under a penalty of twenty-five dollars for failure to do so, to be paid into the pub-

lic treasury; and in that case, the judge shall cause the said monuments to be constructed, at the cost of the interested party. And I order and command the judges, justices 286 and local authorities which are now in office, or which may hereafter be in office, in the district of this capital, that in the proper administration of justice, and in fulfilment of the laws on the subject, they shall not permit the interested party, or his heirs or successors, to be in any manner disturbed or molested, in the free use and exercise of ownership and possession of the said four square leagues of land, included in the place of San Rafael del Valle; but that they shall constantly, with activity and vigilance, protect them in the quiet and peaceable possession of the same to which they are entitled by law; so that they can freely, exchange, donate, transfer, cede and alienate said four square leagues of land at their will and election as absolute owners thereof. In which terms the present grant is issued in due form, to the citizen Rafael Elias, his heirs and successors; delivering the same to him, for his security; making registry thereof, in the corresponding book. Given in the capital of Arispe on the 25th of December, 1832. Authorized and signed by me, and sealed with the seal of this treasury office, before the assisting witnesses, with whom I act, in the absence of a notary public, according to law.

JOSE MARIA MENDOZA.

Assistant:

LUIS CARRANCO.

Assistant:

BARLOTO MARISEDA.

This title remains registered in the corresponding book in the office of this general treasury, on leaf 14.

(RULNEA.)

Number 762. The interested parties, to whom were sold on the 18th of April and 24th of December, 1828, the lands of San Rafael del Valle; San Juan de las Boquillas, and Nogales and San Ignacio del Barocornari, situated in the jurisdiction of the presidio of Santa Cruz; citizen Rafael Elias for the first of said lands; Captain 287 Ignacio Elias Gonzales and Nepunacino Felix, the second; Ignacio and Eulalia Elias, for the third, having shown that they were not to blame for not receiving their respective grants from the general treasury of the State; of which office they asked the same since before the 10th of July, 1830, you shall proceed to issue said title grants in conformity with decree No. 27 of the 11th of August, 1831.

God and liberty.

Arispe, April 29th, 1833.

YGNACIO DE BUSTAMENTO.
LUCAS RODRIGUEZ.

Chief Clerk.

To the treasurer general of the State.

The foregoing is a copy.
Arispe, May 8th, 1833.

JOSE MARIA MENDOZA.

SAN FRANCISCO, *July 2nd, 1868.*

I have carefully examined the original papers from which the foregoing translations were made by myself, and the same are, in my opinion, unquestionably genuine. I find not the slightest grounds for suspecting that they were not executed in good faith at the time of their respective dates.

The grant was made under the decree of the general Congress of Mexico of the 4th of August, 1824, for the classification of general and particular revenues. The 11th article of this decree is as follows: "The revenues which are not included in the preceeding articles belong to the States." The preceeding articles make no mention of lands. Therefore this decree gives to the States the revenues arising from this source.

R. C. HOPKINS,

Keeper of Spanish Archives in Office of U. S. Sur. Gen'l.

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PLAINTIFF'S EXHIBIT No. —.

Rancho of San Pedro.

Situated in the jurisdiction of the presidio of Fronteras, containing four square leagues, sold by the intendencia on the 7 of July 1822, to Don Jose de Jesus Perez, for the sum of \$208.01, with the following boundaries.

Translation of Field-notes.

At the place of San Pedro, on the 16, day of the month of May 1821, I caused a corner monument to be placed, from which a line was run towards the northeast, in which direction there *was* measured and counted 40 cords, of fifty varas, the measurement terminating below the house on the Orilla de Bado, where I ordered a cross to be placed; from this point, the measurement was made fifty cords, the line terminating in the valley, at the skirt of a hill, at the distance therefrom of 3 cords, where I caused a corner monument to be placed, from which point there *was* measured and counted fifty cords, the measurement terminating in front of the Sierra de Guachuca, where I ordered a monument to be placed, the same being a cross on a rocky hill: from this point there *was* measured and counted fifty cords, the line terminating on a mesa chinosa (curly elevation), where I caused a corner monument to be placed; from this point 50 cords were measured, the line terminating in the Cañada de la Bacheta, where I ordered a cross to be placed, "general square, with front, this head line enclosing a portion of a true square," two hundred cords which made two leagues and a half; and placing the compass at this point the line was run towards the southwest, in which direction fifty cords were measured, the measurement ter-

minating in the middle of the valley of the San Pedro, near where I ordered a corner monument to be placed; from this point the measurement was made in the same direction fifty cords, the measurement terminating on a hill on the bank of the river, where I ordered a cross to be placed; and from this point, the measurement was made of fifty cords, the measurement terminating on the Orilla del

289 Bado, at which point I ordered a corner monument to be placed; and from this point 50 cords were measured the line terminating on a monte prieto (black thicket) where I ordered a cross to be placed; from this point there *was* measured 50 cords, the line terminating at the descolgado del picacho, where I ordered a corner monument to be placed; this measurement makes 250 cords, which make $2\frac{1}{2}$ leagues on a side, whereupon the measurements were suspended for the day.

Being at the corner monument and the compass being placed, a course was taken to the S. W. in which direction *was* measured fifty cords, the line terminating in a thicket, where I caused a cross to be placed, from this point fifty cords were measured, the line terminating on the arroya of malpais, where I ordered a corner monument to be placed; from this point, fifty cords were measured to a red mesa, where I ordered a cross to be placed; from this point fifty cords were measured, the line terminating on the same mesa, where I ordered a corner monument to be placed, which measurements embrace four square leagues, (cuatro sitias para ganado mayor).

OFFICE OF SURVEYOR GENERAL

TUCSON, A. T., *June 22nd*, 1891.

I hereby certify that the paper attached hereto is a correct copy of the paper it purports to be a transcript of, on file in this office.

ROYAL A. JOHNSON,

[SEAL.]

U. S. Surveyor General, District of Arizona.

Endorsements: Certified copy field-notes of survey, translated by R. C. Hopkin, in the matter of San Pedro grant, Arizona. Marked for identification.

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MAP.

PLAINTIFF'S EXHIBIT 28.

(Here follows map marked page 290.)

MAP(S) IS/ARE TOO LARGE TO BE FILMED

DEFENDANT'S EXHIBIT 1.

To John Wasson, U. S. surveyor gen'l for Arizona :

Your petitioners, Jose Maria Elias, Manuel Elias, and Santiago Ainsa, administrator of Jose Juan Elias, deceased, respectfully represent, by their attorney, Santiago Ainsa, that they are the lawful owners of the private land claim or grant called San Pedro, in Cochise county, Territory of Arizona, comprising four leagues of land, situated on the banks of the San Pedro river, in said Cochise county, and occupying the space between the boundary line between Mexico and the United States and the ranch or grant of San Rafael del Valle : said San Pedro grant is a perfect title, and was granted May 8th, 1833, by the treasurer general of the State of Sonora, Don Jose Maria Mendoza, by virtue of the article 11th of the decree No. 70 of the General Congress of Mexico of August 4th, 1824, and also of the law No. 30 of May 20th, 1825, of the Congress of the State of Sonora and Sinaloa.

There are no adverse claims known to the claimants.

The documentary evidence presented herewith is a copy from the original papers in the hands of the petitioners, which original is not presented, as it is kept by the parties at Guaymas to enforce certain rights belonging to Mexican grants in Sonora, and which under this title accrue to the owners on the Mexican side of the line.

The original owner or grantee from Mexico was Rafael Elias, the grandfather of the petitioners, who bequeathed the ranch to his son, Rafael Elias, from whom the present owners received it as his heirs-at-law.

292 Jose Juan Elias, one of the owners, having died in 1865, Santiago Ainsa has been duly appointed administrator of his estate by order of the probate court of Pima county, on or about January 25, 1880.

Oral evidence will be presented to you in proof of the above statements.

Your petitioners present a rough map, made out of the description contained in the expediente and as described by persons familiar with the grant, who will be witnesses in the case.

Your petitioners find three facts which they desire to bring to your notice of about the location of this grant :

1st. That the old ruins near the S. W. corner of the grant must be surveyed within the grant.

2nd. That the line A B is two and one-half ($2\frac{1}{2}$) leagues, and that at the point B it touches the S. W. corner of monument of the San Rafael del Valle grant, and that said line runs on the west side of the San Pedro, at a general average distance of half a league.

3rd. That the southern boundary line between B and C of the San Rafael del Valle grant is to that extent the northern boundary of the San Pedro grant, and that from point C the line must be run one and a half leagues south by east, so that the point D must be reached in such manner that if the line D F is run two leagues the line F A will be of such length and in such direction that the perim-

eter A B C D F will enclose four leagues of land, and at the same time enclose the old ruins near the San Pedro river, at the place now called Ochoaville.

Time has obliterated the monuments, and there only remain the old ruins, the imperfect description of the expediente, the fact of the joint boundary of the San Rafael del Valle with the San Pedro, and the distance run as the sides of the grant.

All of which your petitioners respectfully submit.

(Signed)

SANTIAGO AINSA,

Att'y for Petitioners.

(Here follows diagram marked page 294.)

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DEFENDANT'S EXHIBIT 2.

Año de 1821.

Expediente que comprende el puesto nombrado San Pedro sito en jurisdiccion del presidio de Fronteras. N. 640.

296 Sor. Govr. Yntte.:

D. Jose de Jesus Perez, Vecino de Esta Capital, ante V. S. conforme a dro. y con arreglo, a las Rs. ordenanzas de campo, Leyes, Sanciones, y pragmáticas, qe. tratan sobre lo Realengo, y Abadengo, con qe. Su M. (D. L. G.) ampara a sus Basallos, como regalia de Su Real Patrimonio, paresco y Digo: Que en atencion a disfrutar de algunos vienes castrenzes y adventicios, sin tener en propiedad vn fundo en qe. Vbicarlos, y centruarlos, ocurro a la Superioridad de V. S. (prebia licencia Paterna) pa. qe. con areglo a lo prorentibo en las L. L. nacionales, y dispto. pr. Real Cedula de 14 de Febro de 1805; sea havido pr. registrado el paraje despoblado, del Rio, abajo de Sn. Pedro, cita En Esta Proba. rumbo al Norte, frontera Enemiga, inmediato al Desamparado de las Nutrias; En cuya Virtud protesto Entrar en Composicion con S. M. (D. L. G.) Satisfaciendo la quota o pccion de su fincamto.; el Rl. dro. de Media Annata, con lo demas qe. sea nesesario, pues asi es de rigurosa Justicia con merito a lo Espuesto.

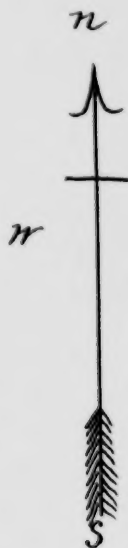
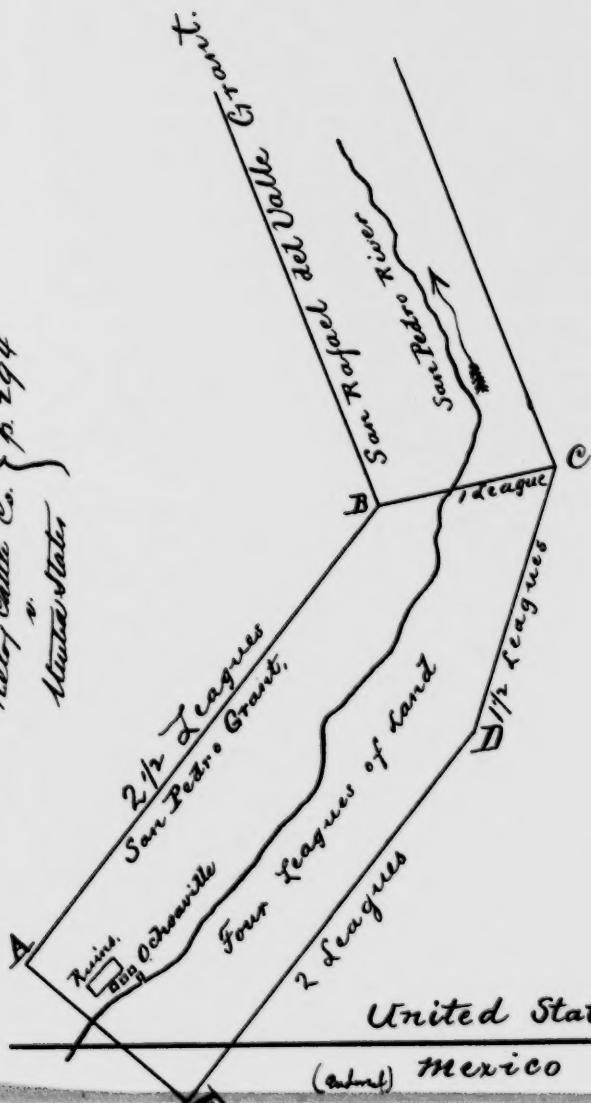
En tal concepto, Supco. á V. S. libre comision pra. qe. se practiquen las diligas respectibas de Vista de ojos, reconocimto. de terreno, Agrimenzura, Baluo, Pregones, Posecion y remate, de los quatro citios qe. se me mediran en figura quadrada, o quadrilonga segun la longitud, o ampleacion del terreno, y su rumbo, qe. en tales terminos.

A V. S. supco. Difiera a mi Justa solicitud, en qe. rescibre gracia, costas protesto y lo nesesario &c.

JOSE DE JESUS PEREZ. [RÚBRICA.]

Alamos Marzo 12. de 1821.

No 204.
Reby' Chute Co.
" "
United States



Por presentado y admitido, sin perjuicio de tercero: Dn. Nazario Gomez, procederá á la medida, valuacion, y demas diligs. de
 297 estilo, citando á los colindantes; y me dará cuenta concluidas
 qe. sean, pa. lo demas que haia lugar.

CORDERO. [RÚBRICA.]

Fronteras 28 de Abril de 1821.

Por recibido, del Apoderado Dn. Rafael Salas, el antecedente superior decreto de comision, en cuya virtud pasese pr. mi el oficio de impartimiento, de pase y auxilios nesesarios, que debe ampear el Alcalde constitucional de este Partido para proceder a la mensura. Dn. Nazario Gomez Juez comisionado asi lo Decrete mande y firme pr. ante los de mi assa. segun dho doy fee.

NAZARIO GOMEZ. [RÚBRICA.]

Assa.: LUCIO GOMEZ. [RÚBRICA.]

Assa.: FULGENCIO TELLES. [RÚBRICA.]

Con flia 29 del corriente se paso el oficio que se prebiene en la Diligencia que antecede y para constancia puse esta q rubrique.

[RÚBRICA DE NAZARIO GOMEZ.]

En 30 del corriente mes y año, contesto el Alcalde constitucional Dn. Miguel Teran, oficio de negatibo de los auxilios impartidos pr. este Juzgado, en cuya virtud atento a pedir la remision de Expedientes a su poder en los terminos siguientes, (entre otras cosas) dice: Espero d V. me los remitira para dar el debido cumplimiento a los superiores Decretos; pues no puedo dar el pase para q estos sean mensurados pr. otro si no es pr. mi, quedando pr. esto obligado a dar mis descargos siempre qe. por el superior se me pidan los
 298 motivos que tube para ello los que reservo para entonces; con lo que contesto a los quatro de V. en tal concepto mediante su responsabilidad pasesele el presente Expediente, cobrando recibo para el resguardo de este Juzgado y pr. el presente asi lo decreto y firme segun derecho doy fee.

NAZARIO GOMEZ. [RÚBRICA.]

Assa.: LUCIO GOMEZ. [RÚBRICA.]

Assa.: FULGENCIO TELLES. [RÚBRICA.]

Fronteras 3 de Mayo de 1821.

Auto de obediencia Por recibido el antecedente superior Decreto entregado a este Juzgado por D. Nazario Gomez, en cuya virtud y habiendoseme presentado la persona de D. Rafael Salas Poderadiente del interesado Dn. Jose Jesus Perez cuyo Poder doy fee haver visto: Dixe se proceda a la agrimensura a cuyo efecto nombrese Promotor Fiscal, Ynsptos. medidores Baluadores, y Ministro Apuntador de rumbos; y como en la persona de D. Lucio

Gomez, D. Ramon Benites D. Teodoro Aros, y D. Luis Aragon, reciden las circunstancias de idoneidad, edentidad, practica, pericia y conocimiento, he venido en nombrar como nombro al primero de Promotor Fiscal para el reconocimiento de terrenos, Vista de Ojos, y pedimentos a veneficio de Hazienda Publica: al segundo y tercero qe. lo son Benites y Aros para Baluadores; y al quarto D. Luis Aragon para apuntador de rumbos, en tal concepto notifiqueceles sus encargos para q. aceptados se les Jure y dicierna, y conforme a dro y con lo q. resulte proceder a lo mas q. en justicia corresponda. Yo D. Miguel Teran, Alcalde constitucional de este Partido y Juez Agrimensor en este Registro asi lo Decreto mande y firme en la forma ordinaria por Dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

JULIAN MONTAÑO. [RÚBRICA.]

299 Yncontinente Yo el Juez Agrimensor en virtud del auto q. antecede site y comparecio en este Juzgado la persona de D. Lucio Gomez, y en ella le notifique e hize saver el nombramiento de Promotor Fiscal de Hazienda Publica para la mensura y enterado de todo Dixo: lo hoye y lo firmo conmigo y los de mi asistencia en la forma ordinaria por dro doy fee.

MIG'L TERAN. [RÚBRICA.]

LUCIO GOMEZ. [RÚBRICA.]

JULIAN MONTAÑO. [RÚBRICA.]

En seguida estando presente la persona de D. Lucio Gomez Promotor Fiscal nombrado le recivi juramento q. hizo en toda forma de Dro por Dios nro Señor y una santa cruz socuyo cargo y sus penas ofrecio proceder fiel y legalmente al desempeño de su comision, protextando no defraudar ni consentir lo contrario a los dros que corresponden a veneficio de Hazienda Publica, lo qual executara sin dolo fraude polucion ni engaño, en fuero del Juramento q. fho tiene digo ser mayor de veinte años de estado casado de Calidad ciudadano y lo firmo por a ante mi y los de mi asistencia segun dro doy fee.

MIG'L TERAN. [RÚBRICA.]

LUCIO GOMEZ. [RÚBRICA.]

JULIAN MONTAÑO. [RÚBRICA.]

Yo el Nominado Alcalde y Juez agrimensor, visto la aceptacion y Juramento del nombrado Promoter Fiscal de Hazienda Publica D. Lucio Gomez: Dixe le discernia y Dicierno el tal cargo y para ello interponia, e interpongo mi autoridad y judicial Decreto y por ella le dava y doy el poder y facultad quanto por dro se requiera necesario sea mas pueda y deba valer para q a
300 nombre de Hazienda Publica, haga todos los actos agencias

y diligencias q. aquella por si hacer deva en la materia y Por el presente asi lo Decreto mande y firme en la forma ordinaria doy fee.

MIG'L TERAN. [RÚBRICA.]

De assa.: — — —.

De assa.: JULIAN MONTAÑO. [RÚBRICA.]

En el mismo dia mes y año Yo el nominado Alcalde y Juez agremensor, previa persona liberal del Promotor Fiscal nombrado, site y comparecieron ante mi y en este Juzgado las personas nombradas D. Ramon Benites, D. Teodoro Aros y D. Luis Aragon, a quienes de presente les notifique e hize saver el Cargo de medidores Baluadores y Apuntador de rumbos y cada uno insolidum y de mancomun dijeron aceptavan y aceptaron et tal encargo. Y lo firmaron por ante mi el promotor Fiscal y testigos de asistencia con quienes actuo segun dro doy fee.

MIG'L TERAN. [RÚBRICA.]

LUCIO GOMEZ, P. F. [RÚBRICA.]

TEODORO AROS. [RÚBRICA.]

RAMON BENITES. [RÚBRICA.]

LUYS DE ARAGON. [RÚBRICA.]

JULIAN MONTAÑO. [RÚBRICA.]

Successivamente previa personalidad del Promotor Fiscal nombra doy en virtud de la aceptacion hecha por Dn. Ramon Benites D. Teodoro Aros y D. Luis Aragon, en sus Personas q. doy fee conosco, y a cada uno insolidum y de mancomun les recibí juramento q
 301 hicieron en toda forma de Dro por Dios Nuestro Sor y una
 santa cruz socuyo cargo y sus penas prometieron proceder
 fiel y legalmente segun su leal saver y entender en el justiprecio del fundo sin que en ello usen de fraude o dolo y en fee de lo qual y observancia del atrivuto lo firmaron por ante mi el Promotor Fiscal y los de mi asistencia con quienes actuo en la forma ordinaria por dro doy fee.

MIG'L TERAN. [RÚBRICA.]

LUCIO GOMEZ, P. F. [RÚBRICA.]

RAMON BENITES. [RÚBRICA.]

Ass.: LUYS DE ARAGON. [RÚBRICA.]

—: JULIAN —TAÑO. [RÚBRICA.]

Vista la aceptacion y juramento hecha por los Ministros Abaluadores y Apuntador constante en la precedente Diligencia Dije les discernia y dicierno el cargo de Ynsperetos Medidores abaluardor y Apuntador para lo qual interponia e interpongo mi autoridad y judicial Decreto dandoles como les do y por el presente todo el poder

y facultad necesaria para que reconocidos los terrenos sus Pastos Montes Aguajes y Abrevaderos para que segun sus especies calidad y circunstancias los valuen y justiprecien con la legalidad y escrupulosidad que requiere la materia. Y por el presente asi lo Decrete mande y firme con los de mi asistencia segun dro doy fee.

MIG'L TERAN. [RÚBRICA.]

TEODORO AROS. [RÚBRICA.]

De assa.: — — —.

De assa.: JULIAN MONTAÑO. [RÚBRICA.]

En tres dias del Mes de Mayo Yo el nominado Alcalde y Juez agrimensor de estas Diligencias Dixe que en atencion a estar concluidas las Diligencias de nombramiento de Ministros necesarios a la faccion mediante a no haver colindantes q. citar
302 fixece cartel Publico combocatorio a quienes se creyese tener Dro y por el presente hagase entender q. para el dia seis del actual, en cuyo tiempo se les oira atendera y guardara la justicia q. demanden y les asista y por el presente asi lo Decrete mande y firme en la forma ordinaria doy fee.

MIG'L TERAN. [RÚBRICA.]

JULIAN MONTAÑO. [RÚBRICA.]

Yncontinenti se fixo al Publico cartel combocatorio q se previene en la Diligencia q. antecede y para la Devida constancia y q. obre los efectos q. haya lugar en dro puse esta q. rubrique.

[RÚBRICA DE MIGUEL TERAN.]

Abiendose citado a D. Man'l Antunes y contextado este con fha 17 del actual lo q. se ve por su oficio que mando se acumule a este expediente. pa. q. en el obre los Efectos a que halla lugar en dro, asi mismo esperese su personalidad pa. el procedimto. de medidas y por el presente asi lo Decrete mande y firme segun dro doy fee.

MIG'L TERAN. [RÚBRICA.]

LUCIO GOMEZ. [RÚBRICA.]

JULIAN MONTAÑO. [RÚBRICA.]

Contestando al oficio de Vm. de 16 del corrtte. comparecere personalmente al punto q. me sita, sobre las medidas de terrenos q. p. cuenta de D. Jose de Jesus Perez, se estan executando en el Rio de San Pedro: y alli señalare los terrenos q. me qe. me hallo
303 en disposicion de luego a luego rexistrar hasta hacer las finales diligs. de composicion con S. M. Y en caso de q. dhas medidas comprendan excediendose a los terrenos q. señalare y tengo amparados hace el espacio de dos años, con mis ganados en tal caso entrare en opocicion y puja de ellos como mejor me combenga.

Dios guarde a Vm ms. as. Puesto de Terrente. 17 de Mayo de 1821.

MANU'L ANTUNES. [RÚBRICA.]

Sor. Alce. constitucionl. Dn. Mig'l Teran.

En el campo puesto de San Pedro a los dies y ocho dias del corriente mes y año Yo el nominado Alcalde prebia personalidad del promotor fiscal, Mintros Medidores Baluadores, y Apuntador por ante los de mi asistencia haviendose presentado en persona D. Man'l Antunes y espresado que de la casa de San Pedro Rio avajo podian proceder á la mensura sin q de ahi para dha ruta le resultase perjuicio pues subiendose Rio arriva hera perjudicado por juzgarse poseido de dros y comprendidos los terrenos q. tiene amparados en los citios que de dia en dia espera se le adjudiquen lo que espuesto por el referido Antunes, y oido por el Apoderado D. Rafael Salas esecciono este la mora o perjuicio que resultaria a su parte de privarsele del veneficio de la Agua que produce la cienega que es la madre de estos exidos; sobre lo qual seria inabil la medida á beneficio de su poderdante sobre cuyas operaciones lidiaron Antunes y Salas hasta que despues de consiliados en obio de trastornos gastos y perjuicios que a qualquiera de las partes interezadas pudiera
304 resultarles sedieron y combinaron en partir la Agua de la cienega mitad por medio para el veneficio de las Lavors quedando por este mismo hecho obligs. a la armonia pues asi se comprometen Antunes por si, y Salas á Nombre de su poderdante en cuyo testimonio lo sente por diliga. q. firmaron conmigo el Promr. Fiscal y demas Mintros por ante los de mi asista. con qes. actuo en la forma ordinaria a falta de Escrivano Publico y Real q. no le hay en los terminos q. el dro previene q. de todo doy fee.

MIG'L TERAN. [RÚBRICA.]

LUCIO GOMEZ. [RÚBRICA.]

RAFL SALAS. [RÚBRICA.]

RAMON BENITES. [RUBRICA.]

TEODORO AROS. [RÚBRICA.]

JULIAN MONTAÑO. [RÚBRICA.]

En el mismo dia mes y año estando en el campo y haviendo combinado los interesados Previa Personalidad del Promotor Fiscal y demas Mintros hize poner Mohonera Esquina quadra de donde tomando el rumbo del Surueste al Noroeste se midieron y contaron cinqu. cordeladas que termino la ultima desde la Casa Rio avajo a las Orillas del Bado a la caida donde hize poner Mohonera cruz y de ahi se midieron y contaron cinquenta cordeladas q. termino la ultima en el mismo Balle á orillas de una Loma a distancia de tres cordeles donde hize poner mohonera esquina y desde ella se midieron y contaron cinqu. cordeles q. termino la ultima frente la Sierra de Guachuca donde hize poner mohonera cruz en una loma Pedregosa, y

desde ella se midieron y contaron cinquenta cordeles que termino el ultimo en una Mesa chinosa donde hize poner Mohonera esquina y desde ahí se midieron y contaron cinquenta cordeles q. termino la ultima en la cañada de la Bachata donde hize poner Mohonera cruz quadra gral confinante y devisoria enserrando este caveceado y en figura de verdadera quadrada doscientas cordeladas q. hacen dos y media leguas; y de ahí puesto el Abujon y tomado el rumbo del Noroeste al Surueste se midieron y contaron cinqta. cordeles q. termino la ultima en medio del Balle del Rio de San Pedro donde hize poner mohonera esquina y de ahí por dho rumbo se midieron y contaron cinqta. cordeles que termino el ultimo pasado el Rio a la orilla de una Loma donde hize poner mohonera cruz y desde ella se midieron y contaron cinqta. cordeladas que termino la ultima en el Arrollo de las Baras donde hize poner Mohonera Esquina y desde ella se midieron y contaron otras cinqta. cordeladas que termino la ultima en un Monte Prieto donde hize poner Mohonera cruz y de ahí se midieron y contaron cinquenta cordeladas q. termino la ultima a la descolgada del Picacho donde hize poner Mohonera Esquina quadra gral encerrando esta medida doscientas cinquenta cordeladas que hacen dos y media leguas en su costado con lo que por ser ya tarde se suspendio esta faccion para continuarla el dia siguiente. En cuyo testimonio lo sente por diliga. q. firme con el Promotor Fscal Minitros Ynteresado y los de mi asista. con quienes actua en la forma orda. doy fee.

MIG'L TERAN. [RÚBRICA.]

LUCIO GOMEZ. [RÚBRICA.]

JOSE RAF'L SALAS. [RÚBRICA.]

TEODORO AROS. [RÚBRICA.]

RAMON BENITES. [RÚBRICA.]

JULIAN MONTAÑO. [RÚBRICA.]

306 En diez y nueve dias del mismo mez y año Previa Personalidad del Promotor Fiscal y demas Minitros estando en el campo en la Mohonera Esquina quadra gral puesto el Abujon y tomado el rumbo del Norueste al Surueste se midieron y contaron cinqta. cordeles q. termino el ultimo en un Monte espeso donde hize poner Mohonera cruz y desde ella se midieron y contaron otras cinqta. cordeladas que termino la ultima en el Arroyo del Malpaiz donde hize poner Mohonera Esquina y desde ella se midieron y contaron cinquenta cordeles que termino la ultima á la suvida de una Mesa colorada donde hize poner Mohonera cruz y desde ella se midieron y contaron cinquenta cordeles que termino la ultima en la misma mesa donde hize poner Mohonera Esquina quadra gral confinante y devisoria y desde ella tomando el rumbo del Surueste al Noroeste se dieron por invivitas y medidas doscientas cinquenta cordeladas q. componen dos y media leguas; con cuya operacion quedan huvicados Caveceados medidos y sentruados quatro citios de

tierra para Ganado Mayor sin que resulte perjuicio mediante a la conformidad del cumbecino. Y para que obre los efectos que halla lugar en dro lo sente por Diligencia q firme con el Promotor Fiscal Mintros Ynteresado y los de mi asistencia con quienes actuo en la forma ordinaria por dro doy fee.

MIG'L TERAN. [RUBRICA.]

LUCIO GOMEZ. [RUBRICA.]

JOSE RAFL SALAS. [RUBRICA.]

TEODORO AROS. [RUBRICA.]

RAMON BENITES. [RUBRICA.]

JULIAN MONTAÑO. [RUBRICA.]

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Sx. PEDRO, 21 de Mayo de 1821.

Hallan lose concluida esta mensura, dije se proceda al justiprecio y valuo qe. deven realizar los insperitos valuadores D. Ramon Benitez y D. Teodoro Aros, previa la acceptacon, de su encargo, y fho procedase á lo mas qe. en Dro. corresponda. Y pr. el presente asi lo Decrete mande y firme en la forma ordinaria doy fee.

MIG'L TERAN. [RUBRICA.]

JULIAN MONTAÑO. [RUBRICA.]

Consecuente y en virtud del auto qe. antecedo, previa personalidad del Promotor Fiscal nombrado, siendo presentes los Mitros. valuadores D. Ramon Benitez y D. Teodoro Aros, en sus personas les notifique, que vajo el cargo qe. aceptado tienon justiprecio y valuen el fundo qe. comprehende esta mensura de lo qual enterados dijeron cada vno insolidum y de comun acuerdo: que en atencion a la vista de ojos y reconocimto. de terrenos qe. al tpo. de sus medidas han expeccionado, los valuan los tres primeros, en sesenta ps. cada vno y le otro restante en diez ps.: que este justiprecio segun su leal saver y entender es el justo y lexitimo, tanto por la situacion de sus terrenos, quanto pr. ser comun entrada y salida de los Enemigos barbaros; qe. esta consideracon. con la de publico y notorio qe. es trillada y bien sabida, da el enigma verdadero; en el concepto que en esta operacon. proceden a lo qe. de presente dictan las actuales circunstancias, sin q. en ello halla fraude, dolo, colucion, ni engaño, coaccion ni miedo; pues solo atienden al juramto. qe. fho tienen. En cuyo testimonio asi lo otorgaron y firmaron conmigo, el Promotor Fiscal, y los de mi assa. con quienes actuo en la forma ordinaria.

308

MIG'L TERAN. [RUBRICA.]

LUCIO GOMEZ. [RUBRICA.]

RAMON BENITES. [RUBRICA.]

TEODORO AROS. [RUBRICA.]

JULIAN MONTAÑO. [RUBRICA.]

Hallandose justipreciados y valuados los qtro. sitios de terra. para ganado mayor, dije se le pase este Expediente al Promotor fiscal nombrado p. que segun su estado deduzca á beneficio de Hazda. Publica, lo que estime combeniente. Y por el presente, asi lo Decrete mande y firme Segun Dro. Doy fee.

MIG'L TERAN.

[RÚBRICA.]

JULIAN MONTAÑO. [RÚBRICA.]

Sor. Juez Agrimenzor:

El Promotor fiscal Nombrado en esta causa Dice que como ocularmente ha explorado la tierra, reconocido su Estacion, frontera, linea, y mas o menos abundancia de Pastos, Aguajes, Montes, y Profiqüidad del terrado, juzga por justo, legal y sin gravamen alguno a la Hazienda Publica pues del ampare y Pueblo de estos terrenos redundá veneficiada esta, y toda la Nacion: que en tal concepto Es de sentir se reciva la correspondiente Ynformacion de Ydoneidad: para lo qual citara tres testigos integros y veraces, y que estos en calidad de Posecion Digan.

1°—Si conocen a la parte, y les tocan las generales de la ley.

2°—Si saven, les consta ó han oido decir, que el registrante D. Joseph Jesus Perez, tenga bienes Suficientes con que amparar
309 estos citios.

3°—Por vltimo si de su ampare y Pueblo resultan grandes ventajas á Hazienda Publica y la Nacion.

Y evacuada que sea se servira V. correrme traslado para deducir lo que á derecho Publico combenga, Esto dice por hahora el que subscribe.

Fronteras Mayo 22 de 1821.

LUCIO GOMEZ. [RÚBRICA.]

FRONTERAS 24 de Mayo de 1821.

Prosedase a recibir la Ynformacion que solicita el Promotor Fiscal Nombrado, a cuyo efecto sitesen las personas de D. Jose Hoyos, D. Felix Quijada y D. Franco. Ramirez a quienes previa personalidad de la parte petente, se les recibira la acersion Jurada que solicita, y fho se prosedera a lo mas que haya lugar, y por el presente asi lo decrete y firme segun dro doy fee.

MIG'L TERAN.

[RÚBRICA.]

JULIAN MONTAÑO. [RÚBRICA.]

Assa.: FELIX QUIJADA.

Assa.: ———.

Yncontinenti site y comparecio en este Juzgado D. Jose Hoyos á quien previa personalidad del promotor fiscal le recivi juramto. q. hizo en toda forma de dro por Dios Ntro. Sor y una santa cruz; socuyo cargo prometio decir verdad, en quanto supiere y sea preguntado; y siendolo por el tenor del antecedito. Ynterrogatorio, Dixo a la primera.

Que conoce a la parte de D. Jose Jesus Perez que no le tocan las gales de la Ley y responde.

A la segunda: Que save y le consta tener Vienes suficientes
310 para el ampare y pueble de estos terrenos, como que esto es Publico y notorio y responde.

A la tercera: Que en su concepto es Venefico, tanto a la Hazienda Publica, como a toda la Nacion; pues en ello resultara sin tropieso el trafico, comercio e Yndustria, y demas artes Liberales e Yndustriales: Que esta es la verdad en fee del juramto. que fho tiene Dijo ser de estado casado, de edad de veinte y nueve años: calidad ciudadano; Y lo firmo conmigo y los de mi asistencia segun dro doy fee.

MIG'L TERAN. [RÚBRICA.]

JOSE HOYOS. [RÚBRICA.]

Assa.: RAFAEL YESCAS. [RUBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

En seguida: cite y comparecio este Juzgado D. Felix Quijada y en su persona que doy fee conosco le recivi juramento que hizo, previa personalidad del Promotor Fiscal, por Dios Ntro Sor. y una santa cruz, socuyo cargo prometio decir verdad en quanto supiere y sea preguntado y siendolo al tenor del antecedente Ynterrogatorio Dixo á la primera.

Que conoce a Dn. Jose Jesus Peres; y q. no le tocan las gales de la Ley.

A la segunda que save de oidos de que la parte registrante tiene Vienes suficientes para poblar, y amparar el sitio que se hace mencion: y responde:

A la tercera: Que son Publicas y notorias y de publica voz y fama y comun opinion las ventajas que resultan a la Hazienda Publica y toda la Nacion, del ampare de los puntos desiertos y despoblados:

Que esta es la verdad en fee del juramento q. fho tiene; Dijo
311 ser de Estado Soltero de Edad de veinte y cinco años; de Calidad ciudadano. Y lo firmo por ante mí y los de mi asistencia segun dro doy fee.

MIG'L TERAN. [RÚBRICA.]

FELIX QUIJADA. [RÚBRICA.]

Assa.: RAFAEL YESCAS. [RUBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

En el mismo dia mes y año: cite y comparecio la Persona de D. Franco. Ramires a quien previa personalidad del Promotor Fiscal, le recivi juramento que hizo en toda forma de dro por Dios Ntro Sor y una santa cruz; socuyo cargo prometio decir verdad en quanto supiere y sea preguntado; y siendolo por el tenor del interrogatorio q. antecede Dixo.

A la primera q. conoce a D. Jose Jesus Perez y q. no le tocan las gales de la Ley.

A la segunda Que de oídos save tener Vienes suficientes pa. el ampare y pueble de esta Mercedad.

A la tercera: q. a toda Luz no es desmembrable la ventaja que de su repueble es consiguiente a la Hazienda Publica y la Nacion que esta es la verdad sesun su juicio. Dixo ser de estado casado de Edad de quarenta años de Calidad ciudadano; y no firmo por no saver hizelo Yo con los de mi asistencia con quienes actuo en la forma ordinaria por dro doy fee

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RUBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

Hallandose concluida la informacion q solicita el Promotor Fiscal Dixe buelvan al poder del nominado Promotor, pa q Deduzca
312 lo q. estime combeniente: asi lo decrete y firme seg'n dro.

MIG'L TERAN. [RÚBRICA.]

Sor Juez Agrimenzor.

Dn. Lucio Gomez, Promotor fiscal nombrado en esta Agrimenzura dice: q visto el estado del Espediente; y que de el segun su estado supuesto resulta en beneficio de Hazienda Publica, y de toda la Nacion el ampare y Pueblo del sitio de San Pedro: así es que en obsequio de los derechos de la misma Nacion y para que se finque, adjudique, y rematen, en el mayor y mejor Postor, se servira sacar al Pregon por el termino de treinta dias consecutivos el abaluo en que se hayan, admitiendo las posturas, pujas y mejoras q resulten, y reservandoles su derecho á salvo para el dia de su fincamiento y remate, que debiera ser en la capital de Arispe en Junta Provicional de Real Hazienda, precedida por el Sor Governador Yntendente de la Provincia, quien prefixara dia al remate, y ebacuara todo lo mas q. por estilo de la practica universal florence pr. derecho se requiere.

Es quanto tiene q espresar el q subscribe sujetando su juicio a la probidad del savio Gobierno y literatud del Teniente Letrado de Provincia.

Fronteras 26 de Mayo de 1821.

LUCIO GOMEZ. [RÚBRICA.]

FRONTERAS — 27, 1821.

Vista la Solucion del Promotor fiscal Nombrado: Dixe: se Saque al pregon el sitio de San Pedro, y su valuo, admitiendose las posturas, pujas, y mejoras qe. se hagan; y pr. el presente haci lo decrete, mande y firme segun Dro. doy fee.

313

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

JULIAN MONTAÑO. [RÚBRICA.]

En el mismo dia mes y año Yo el juez agrimensor hize q. a son de caja, y en altas claras, y leguibles Voses dixera Lasaro Quixada: Se hace publico y notorio como D. Jose Jesus Perez ha registrado el paraje de San Pedro, y admitida su solicitud se midieron uvicaron, y mercearon quatro sitios de Tierra pa. ganado Mayor, los q. se justipreciaron y Valoraron en cantidad de ciento y nobenta p. en cuya Virtud todo aquel qe. se creyese con dro. fundo, ó quisiese hacer postura al terreno qe. se domina, ocura qe. se le admitira la postura; y guardaran sus accions. hasta el dia del fiscamento de remate qe. sera en Arispe el dia qe. designe el Sor. Governador Yntendte. de la Prova. pa. cuyo efecto le Son reserbados sus acciones y dros. y no haviendo resultado postor alguno lo sente pr. diligencia qe. firme con los de mi asistencia segun dro doy fee, y en este papel sin perjuicio del real haber.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

En 28. dias del mismo mes y año Yo el nominado Alcalde, hize qe. a son de caja, y pr. Vos de pregonero se sacase al publico la merced y Valuo del paraje de San Pedro, y no haviendo resultado postor, lo sente pr. diliga. que firme segun dro doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

314 En 29. dias del referido mes Yo el Expresado Alcalde hize qe. a son de caja, y pr. Vos de pregonero, se Sacase el publico la merced y valuo del paraje de San Pedro, y no haviendo resultado postor lo sente pr. diligencia qe. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

JULIAN MONTAÑO. [RÚBRICA.]

En 30. del corriente mes, Yo el referido Alcalde hize qe. a son de caja; y pr. vos de pregonero, se Sacase al Publico, la merced y valuo del Paraje de San Pedro, y no haviendo resultado postor lo sente pr. diligencia qe. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

En 31. dias de dho. mes y año, yo el mismo Alcalde hice qe. a son de caja, y pr. vos de pregonero se Sacase al publico la merced y valuo del paraje San Pedro, y no haviendo resultado postor lo puse pr. diligencia q. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

En el mes de Junio 1º. del año de 1821 Yo el Alcalde hize qe. a son de caja y pr. vos de pregonero se sacase al Publico, la merced y valuo del paraje de San Pedro, y no haviendo resultado postor lo puse pr. diliga. q. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

315 En dos dias del mismo mes, Yo el nominado Alcalde, hize q. a son de caja, y pr. vos de pregonero, se sacase al publico la merced y valuo del paraje de San Pedro, y no haviendo resultado postor lo puse pr. diliga. qe. firme con los de mi asistencia segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

En 3 dias del referido mes, Yo el referido Alcalde hize qe. a son de caja, y pr. vos de pregonero, se sacase al publico la merced y valuo del paraje de San Pedro, y no haviendo resultado postor, lo puse pr. diligencia qe. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

En 4. dias del mismo mes, Yo el referido Alcalde, hize qe. a son de caja, y p. vos de pregonero, se sacase al publico la merced y valuo del paraje de San Pedro, y no havdo. resultado postor, lo puse pr. diligencia qe. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

En 5. dias del espresado mes, Yo dho. Alcalde, hize qe. a son de caja, y por vos de pregonero, se sacase al publico la merced y valuo del paraje de San Pedro, y no havdo. resultado postor, lo puse pr. diligencia qe. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

316 En 6. dias del Expresado mes, Yo el nominado Alcalde hize qe. a son de caja, y pr. vos de pregonero, se sacase al publico la merced y valuo del paraje de San Pedro, y no habiendo resultado postor, lo puse pr. diligencia qe. firme con los de mi assa. segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

En 7. dias del mismo mes, Yo el referido Alcalde, hize qe. a son de caja, y pr. vos de pregonero, se sacase al publico la merced y valuo del paraje de San Pedro, y no havdo. resultado postor, lo sente por diligencia qe. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

En 8. dias del expresado mes, Yo el mismo Alcalde hize qe. a son de caja, y pr. vos de pregonero, se sacase al publico la merced y valuo del paraje de San Pedro, y no habiendo resultado postor, lo puse pr. diligencia qe. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

En 9. dias de dho. mes Yo el mismo Alcalde, hize qe. a son de caja, y pr. vos de pregonero, se sacase al Publico la merced y valuo del paraje de San Pedro, y no habiendo resultado postor, lo sente pr. diligencia qe. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

317 En dies dias del mismo mes, Yo el referido Alcalde hize
 qe. a son de caja, y pr. vos de pregonero, se Sacase al publico
 la merced y valuo del Paraje de San Pedro, y no haviendo resultado
 postor, lo sente pr. diligencia qe. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

En 11. dias del Expresado mes y año, Yo el juez agrimensor, hize
 qe. a son de caja, y en altas, claras y leguibles voses dixera: Lasaro
 Quijada: Se hace publico y notorio como D. Jose Jesus Peres, ha
 registrado el paraje de San Pedro, y admitida su solicitud, se
 midieron uvicaron y mercenaron quatro citios de tierra para ganado
 Mayor, los q. se justipreciaron y valoarn. en cantidad de ciento y
 nobenta ps; en cuya Virtud todo aquel qe. se creyese con dro.
 fundo, o quisiese hacer postura al terreno q. se domina, ocurra qe.
 se le admitira la postura, y guardaran sus accions. hta. el dia del
 fiscanto. de remate, qe. será en Arispel dia qe. decigne el Sor.
 Govor. Yntendte. de la Provincia: pa. cuyo efecto le son reservads.
 sus acciones y dros; y no haviendo resultado postor alguno lo sente
 pr. diligencia qe. firme con los de mi asistencia segun dro. doy
 fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

En 12. dias del mismo mes, Yo el Nominado Alcalde, hize qe a
 son de caja y en vos de pregonero, se sacase al publico la merced y
 valuo del paraje de San Pedro, y no haviendo resultado
 318 postor, lo sente pr. diligencia que firme en toda forma de dro.
 doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

En 13. dias del Expresado mes, Yo el mismo Alcalde hize qe. a
 son de caja. y en vos de pregonero, se sacase al publico la merced y
 valuo del paraje de S. Pedro, y no haviendo resultado postor, lo
 puse pr. diligena. qe. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

JULIAN MONTAÑO. [RÚBRICA.]

En 14. dias del referido mes, Yo el Alcalde, hize que a son de caja, y en vos de pregonero, se sacase al publico la merced y valuo del paraje de San Pedro, y no haviendo resultado postor, lo puse pr. diliga. qe. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

En 15. dias del expresado mes, Yo el mismo Alcalde, hize qe. a son de caja, y en vos de pregonero, se sacase al publico la merced y valuo del paraje de S. Pedro, y no havdo. resultado postor, lo puse pr. diligencia q. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

En 16. dias del mismo mes, Yo el referido Alcalde, hize qe. a son de caja, y en vos de pregonero, se Sacase al publico la merced y valuo del paraje de S. Pedro, y no havdo. resultado postor, lo sente pr. diligencia qe. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

En 17. dias del propio mes, Yo dho. Alcalde hize qe. a son de caja, y en vos de pregonero, se sacase al publico la merced y valuo del paraje de San Pedro, y no haviendo resultado postor, lo sente pr. diliga. qe. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

En 18. dias de dho. mes, Yo el mencionado Alcalde hize qe. a son de caja, y en vos de pregonero, se sacase al publico la merced y valuo del paraje de San Pedro, y no haviendo resultado postor, lo sente por diligencia qe. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

En 19. dias corriente mes, Yo el nominado Alcalde, hize qe. a son de caja, y en vos de pregonero, se sacase al publico la merced y

valuo del paraje de San Pedro, y no havdo. resultado postor, lo sente pr. diligencia qe. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa. : FELIX QUIJADA. [RÚBRICA.]

Assa. : JULIAN MONTAÑO. [RÚBRICA.]

320 En 20. dias de dho. mes, Yo el referido Alcalde, hize qe. a son de caja, y vos de pregonero, se Sacase al publico la merced y valuo del paraje de San Pedro, y no haviendo resultado postor, lo sente pr. diligencia qe. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa. : FELIX QUIJADA. [RÚBRICA.]

Assa. : JULIAN MONTAÑO. [RÚBRICA.]

En 21. dias de este mes Yo el expresado Alcalde hize qe. a son de caja, y vos de pregonero, se sacase al publico la merced y valuo del paraje de S. Pedro, y no havdo. resultado postor, lo sente pr. diligencia qe. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa. : FELIX QUIJADA. [RÚBRICA.]

Assa. : JULIAN MONTAÑO. [RÚBRICA.]

En 22. dias del mismo mes, Yo el referido Alcalde hize qe. a son de caja, y vos de pregonero, se sacase al publico la merced y valuo del paraje de San Pedro, y no haviendo resultado postor, lo sente pr. diligencia qe. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa. : FELIX QUIJADA. [RÚBRICA.]

Assa. : JULIAN MONTAÑO. [RÚBRICA.]

En 23. dias del nominado mes, Yo el propio Alcalde hize qe. a son de caja, y vos de pregonero se sacase al publico la merced y valuo del paraje de San Pedro, y no haviendo resultado postor, lo sente pr. diligencia qe. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa. : FELIX QUIJADA. [RÚBRICA.]

Assa. : JULIAN MONTAÑO. [RÚBRICA.]

321 En 24. dias de dho. mes, Yo el mismo Alcalde hize qe. a son de caja, y en vos de pregonero, se sacase al publico la

merced y valuo del paraje de San Pedro, y no habiendo resultado postor, lo sente pr. diligencia qe. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

En 25. dias del mismo mes Yo el nominado Alcalde, hize qe. a son de caja, y en vos de pregonero se sacase al publico la merced y valuo del paraje de S. Pedro, y no havdo. resultado postor, lo sente pr. diligencia qe. firme segun dro. doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Assa.: JULIAN MONTAÑO. [RÚBRICA.]

En 26. dias del corrte. mes y año Yo el Alcalde constitucional y juez agrimensor de esta merced: Dixi: qe. hallandose hebacuadas las diligs. correspondtes. á la agrimensura, se remitan á la Superioridad del Sor. Govor. Yntendte; pa. qe. su Señoria disponga lo q. sea de su Superior agrado. y pr. el presente haci lo decrete mande, y firme, pr. ante los de mi assistencia y en este papel sin perjuicio de haber publico doy fee.

MIG'L TERAN. [RÚBRICA.]

Assa.: JOSE HOYOS. [RÚBRICA.]

Assa.: FELIX QUIJADA. [RÚBRICA.]

Sor. Govor. Yntendte.

Paso a mans. de V. S. las diligs. de medids. vista de ojos
322 valuo, y pregons. practicads. en el despobado citio de San Pedro, a favor de D. Jose Jesus Peres para qe. V. S. disponga lo qe. sea de Justicia.

Dios gue a V. S. ms. as. Fronts. 26 de Juno. de 1821.

MIG'L TERAN. [RÚBRICA.]

Sor. Govor. Yntendte.

D. ANTO. CORDERO.

Arispe 9 de Julio de 1821.

Al Promotor Fiscal.

CORDERO. [RÚBRICA.]

Sor. Yntendte.

El Promotor Fiscal de esta Yntendencia Dice: Que estas Dili-
gencias de mensura, Avaluo, Informacion de idoneidad, y Pregones,
de quatro Sitios de tierra realenga para cria de Ganado mayor, com-
prendidos en el Paraje nombrado San Pedro, sito en Jurisdiccion
del Presidio de Fronteras, justipreciados en cantidad de ciento no-

venta pesos, á razon de sesenta cada uno de los tres primeros, y de diez pesos el restante; y medidos á favor de su denunciante Don Jose Jesus Perez, Vecino de esta ciudad; estan practicadas conforme en todo á las Reales y superiores Disposiciones que hacen regla en la materia. Esto supuesto, y atendiendo el merito que de siyo encierra la evacuada Solicitud del citado Interesado, por ser aquel Realengo tanto mas riesgoso del Enemigo Apache que hostilisa esta Frontera, quanto es muy conveniente y ventajoso el pueble del mismo; pide el defensor Fiscal de la Hacienda publica, se sirva V., si lo tuviese á bien, mandar que con citacion de partes se pro-

ceda en esta Capital á la celebracion de las respectivas tres Almonedas de estilo en solicitud de postores para el Remate del expresado terreno mensurado que deberá fincar en la ultima de ellas á favor del mayor y mejor que resulte: haciendose entender á este proceda á enterar en Tesoreria el valor principal en que se le rematen dichos quatro sitios, su media Annata y 18 p. % de conduccion, el 2 p. % mandado exigir por punto general, y tres pesos para los oficiales agregados á la Contaduria general de Exercito; y qe. visto y aprobado que sea en Junta Provincial este Expediente, agregandosele la correspondiente Certificacion que acredite el citado entero, se dé cuenta con el mismo á la Supor. de Hacienda para la resolucion que convenga. Este es mi parecer el qual no se ha despachado hasta hoy del oficio Fiscal, por la involuntaria traspapelada que el Expediente ha sufrido en él: mas V. sin embargo, resolvera lo que fuese de su mayor agrado. Arispe 25 de Junio de 1822.

FRANCO. PEREZ. [RÚBRICA.]

Arispe Julio 3 de 1822.

Como parece al promotor Fiscal de esta Yntendencia en su antecedente respuesta: procedase á la celebracion de las tres publicas Almonedas y remate de las tres publicas almonedas y remate de las trras. nombradas San Pedro de que tratan estas diligas. con previa citacion del apoderado de la interesado Don Jose Maria Serrano. El Sor. Yntendente de esta prova. asi lo decreto mando y firmo con testigos de assa. á falta de todo Escrivano.

BUSTAMANTE. [RÚBRICA.]

Ass.: JOAQ. ELIAS GONZALEZ. [RÚBRICA.]

Assa.: ANTONIO APALATEGUI. [RÚBRICA.]

324 Yncontinenti siendo presente Don Jose Maria Serrano se le notificaron el parecer fiscal y auto de conformidad que anteceden de que quedo inteligenciado y lo firmo con el Sor. Yntendente y testigos de a-istencia.

BUSTAMANTE. [RÚBRICA.]

Assa.: JOAQUIN ELIAS GONZALEZ. [RÚBRICA.]

Ass.: ANTONIO APALATEGUI. [RÚBRICA.]

1^a. Almoneda. En la Ciudad de Arispe á los tres dias del mes de Julio de mil ochocientos Veinte y dos: Convocados en Junta de Almonedas de esta propia capital el Sor. Yntendente, como presidente, y los vocales que la componen á efecto de celebrar la primera de las trras. á que se contrahe este expediente hizieron que a son de Caja se reunien muchos individuos en el oficio de esta Yntendencia y que en su presencia procediese el pregonero Loreto Salcido á dar un pregon como efectivamente lo dio en altas y claras voces diciendo: Van a rematarse en esta Junta de Almonedas quatro Sitios de tierra realenga para eria de Ganado comprendidas en el paraje nombrado San Pedro sitas en el particular territorio del presidio de Fronteras mensurados á favor de Don Jose Jesus Perez Vizo, de esta Ciudad y valuados en la cantidad de ciento noventa pesos, a razon de sesenta cada uno de los tres primeros y de diez pesos el restante: Quien quisiere hacer postura al insinuado realengo ocurra a formalisarla ante esta junta donde se le admitira la que con regularidad hiciere: en la inteliga. de que en la tercera y ultima almoneda que ha de practicarse el dia de pasado mañana quedara celebrado el remate en el mayor y mejor postor. Y no habiendo ocurrido ninguno

325 se instruyo por diligencia que firmaron los Sres. presidente y vocales de esta Junta de Almonedas.

BUSTAMANTE. [RÚBRICA.]

FUENTE. [RÚBRICA.]

ELIAS GONZALEZ. [RÚBRICA.]

PEREZ. [RÚBRICA.]

2^a. Almoneda. En la misma Ciudad á los quatro dias del mes y año expresados: Se procedio á la celebracion de la segunda almoneda de este expediente, practicandose en los propios terminos que la primera antecedente con solo la diferencia de decir al publico que mañana quedara celebrado el remate. Mas no habiendo resultado ningun postor se puso esta diliga. que firmaron los Sres. presidente y vocales de esta Junta de Almonedas.

BUSTAMANTE. [RÚBRICA.]

FUENTE. [RÚBRICA.]

ELIAS GONZALEZ. [RÚBRICA.]

PEREZ. [RÚBRICA.]

3^a. Almoneda. En la Ciudad de Arispe á los cinco dias del mes de Julio de mil ochocientos veinte y dos: Convocados en Junta de Almonedas de esta propia capital el Sor. Yntendente como presidente y los vocales que la componen con objecto de celebrar la tercera y ultima para el remate de las trras. a que se contraen estas diligencias hicieron que á son de caja y voz de pregonero se reuniesen muchos individuos en el oficio de esta Yntendencia y que

326 en su precencia procediese Loreto Salcido á dar un pregon como efectivamente lo dio igual en todo al que consta de la precedente Almoneda, con solo la diferencia de anunciar al publico que ahora mismo ha de quedar celebrado el remate en el mayor y mejor postor: En cuyo acto comparecio Don Jose Maria Serrano como apoderado de Don Jose Jesus Perez ofreciendo de nuevo el valor del terreno; y siendo ya dada la plegaria de las dose de este dia dijo por ultimo el pregonero: á la una, á las dos, á las tres, que se remata, que se remata, que se remata, que buena, que buena, que buena pro le hagan á D. Jose Jesus Perez. En tales terminos se concluyo este acto quedando solemnemente rematados á favor de este interesado los quatro sitios de tierra realenga de que trata este Expediente por la cantidad de ciento noventa pesos. y para la devida constancia se sento esta diliga. que con el apoderado Don Jose Maria Serrano firmaron los Sres. presidente y vocales de esta Junta de Almonedas.

BUSTAMANTE. [RÚBRICA.]

FUENTE. [RÚBRICA.]

ELIAS GONZALEZ. [RÚBRICA.]

PEREZ. [RÚBRICA.]

ARISPE 6 de Julio de 1822.

Pase este Expediente en traslado con el testimonio autorizado y comprensivo de las superiores determinaciones que rigen en la materia al apoderado Don Jose Maria Serrano para que dentro de tercero dia proceda á exponer en favor de su parte lo que le ocurra en el precente negocio: notificandosele nombre en Mejico un sugeto abonado que lo agite en aquella corte. El Sor. Yntendente interino de esta prova. asi lo decreto y firmo con testigos de su asistencia.

BUSTAMANTE. [RÚBRICA.]

327 Assa.: JOAQN. ELIAS GONZALEZ. [RÚBRICA.]

Assa.: ANTONIO APALATEGUI. [RÚBRICA.]

Razon. En el mismo dia mes y año se entrego en—foxas utiles este Expediente y el citado testimonio al expresado apoderado.

[RÚBRICA DE BUSTAMANTE.]

Sr. Yntendente:

Dn. Josse Maria Serrano, como apodo. de D. Jesus Peres de esta Vecindad, ante V. paresco y digo: que hago pronta debolucion de este Expediente de las trras nombradas San Pedro y del testimonio con q. se me ha corrido en traslado manifestando hallarme conforme con lo actuado hasta su actual estado de remate por estar arreglado en todo á las supres. disposiciones q. gobiernan en la materia y comprende el citado testimonio y solo me resta suplicar á V. se sirva providenciar la pronta conclusion y curso de este Expedte. pa. q.

obtenida q. sea la aprovacion de la Junta Supor. de Hacienda se libre a favor de mi parte el correspondte. Titulo de merced y confirmacion de los quatro Sitios q. contiene el expresado terreno estando pronto a nombrar en Mejico un sugeto habonado y expensado q. se encargue de agitar en aquella corte el presente negocio. Por tanto.

A V. pido y suplico se sirva proveer como solicito, pues en ello recibira gracia y merced mi parte en cuya anima juro no ser de malicia &.

JOSE MARIA SERRANO. [RÚBRICA.]

328 Auto en vista En la Ciudad de Arispe á los seis dias del mes de Julio de mil ochocientos veinte y dos: El Sor. Yntendente Interino de estas Provas. de Senora y Sinaloa Mntro Tesorero propietario D. Ygnacio de Bustamante y Velasco, haviendo visto estas diligencias de medidas, abaluo, pregones, almonedas y remate de las trras. nombradas San Pedro mensuradas pa. cria de ganado mayor y cavallada á favor de Don Jose Jesus Perez Vezino de esta Ciudad, y sitas en el particular territorio de Fronteras, la respuesta dada por su apoderado Don Jose Maria Serrano en el antecedente escrito, con todo lo demas que conste y ver convino dijo: Que declarando como declara por bastantes conformes y arregladas las expresadas diligencias á las superiores disposiciones que rigen en la materia y admitiendo como desde luego admite á composicion con la Haza. Ymperial al nominado Don Jose Jesus Perez por el referido realengo devia mandar y mando se notifique y haga saver á su apoderado proceda á enterar en esta Tesora. la cantidad de doscientos ocho pesos un grano en esta forma: ciento noventa pesos por el valor pral. en que se le remataron al dho. interesado quatro sitios que comprende el relacionado terreno: once pesos un real ocho granos por el dro. de media annata y su 18 p. % de conduccion: tres pesos seis reales cinco granos respectivos al 2 p. % mandado exigir por punto gral. y los tres pesos restantes por derechos de la Contaduria extinguida del mismo ramo: y verificado que sea este entero poniendose de el la correspondiente Certificacion que lo acredite en este Expediente se dara cuenta con el mismo á la Junta superior de Haza. para su aprovacion ó la resolucion que convenga. El Sor. Yntendente por este auto en vista asi lo proveyo mando y firmo con testigos de asistencia á falta de Escrivano.

BUSTAMANTE. [RÚBRICA.]

329 Assa.: JOAQN. ELIAS GONZALEZ. [RÚBRICA.]

Assa.: ANTO. APALATEGUI. [RÚBRICA.]

Yncontinenti siendo precente el apoderado Don Jose Ma. Serrano se le notifico el auto que antecede de que quedo inteligenciado y lo firmo con el Señor Yntendte. y testigos de asistencia.

BUSTAMANTE. [RÚBRICA.]

Assa.: JOAQN. ELIAS GONZALEZ. [RÚBRICA.]

Assa.: ANTONIO APALATEGUI. [RÚBRICA.]

Junta provincial de la Hazienda Ymperial y Arispe 7 de Julio de 1822.

Vistos: Declarase desde luego pr. legal publica y solemnemente rematados en Junta de Almonedas de esta Capital del dia 5 del corriente á favor de Don Jose Jesus Perez de esta Vecindad, los quatro Sitios de trra. realenga para cria de Ganado mayor que comprende el paraje nombrado San Pedro, sito en el particular territorio del presidio de Fronteras por la cantidad de ciento noventa pesos de su justriprecio: Y en su consecuencia dese cuenta con este Expediente á la Junta supor. de Haza. para su aprovacion, ó la resolucion que convenga, conforme tiene providenciado esta Yntenda. en su antecedente auto. Asi lo acordaron y firmaron los Sres. presidente y vocales de esta Junta provincial.

BUSTAMANTE. [RÚBRICA.]

FUENTE. [RÚBRICA.]

ELIAS GONZALEZ. [RÚBRICA.]

PEREZ. [RÚBRICA.]

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ARISPE, 7 Julio de 1822.

Cumplase lo resuelto por la Junta provincial de esta Yntenda. en su antecedente acuerdo de hoy.

BUSTAMANTE. [RÚBRICA.]

Antonio Carrillo, comisario de la Seccion de hacienda de Arispe en el Estado interno de Sonora.

Certifica: que al folio 55 del Libro manual de cargo y Data del año de 1822. se halla sentada la partida siguiente

Julio 8—Son cargo doscientos ocho ps. un grano qe. enteró en esta Tesoreria D. Jose Ma. Serrano, á nombre y como apoderado de Don Jose Jesus Perez Vecino de esta ciudad, en esta forma: 190 pesos pr. el valor pral. en que se le remataron pr. esta Yntenda. cuatro sitios de tierras realengas pa. cria de ganado mayor comprendidos en el paraje nombrado San Pedro sito en el particular territorio del presidio de Fronteras: 11 ps. 1 rl. 8 grs. pr. el dro. de media Annata y su 18 % p. 3 ps. 6 rs. 5 grs. pr. el dos pr. ciento mandado esigir pr. punto gral; y los 3 ps. restantes pr. dros. de la contaduria estinguida del propio ramo, segun esplica el oficio dela misma Yntendencia que distingue el numero 30..... 208.01

Fuente—Gonzalez—Jose Ma. Serrano.

Y para que conste donde convenga doy la presente pr. duplicado á pedimento del Sor. Tesorero gral. del Estado Don Jose Maria Mendosa, en este papel comun por falta del de oficio en Arispe á veinte y cinco de octubre de mil ochocientos treinta y dos.

ANTONIO CARRILLO. [RÚBRICA.]

Sor. Tesorero gl.:

Ygnacio Peres á nombre de su Ermo. Jose de Jesus, ante V. S. en la mas bastante forma paresco y digo: Que pr. el espedte. original q. pongo en manos de V. S. tendrá la Vondad de imponerse q. en 5 de Julio de 1822, fue rematado á favor de mi citado Ermo. el terreno nombrado San Pedro, sito en la Jurisdiccion de Fronteras, comprehensiva de cuatro sitios de tierra; y haviendo permutado pr. via legal el dro. q. há ellos tenia con el ciudo.

Rafael Elias, y mediante á q. aun no se ha espedido el titulo de merced respectibo.

A V. S. pido y suplico se Sirba mandar espedir el correspondte. á favor del espresado ciudo. Rafael Elias, como actual dueño y propietario del terreno de San Pedro. es gracia q. inpetro de V. S. jurando no Ser de malicia.

Arispe 25 de Octubre de 1832.

YGNACIO PERES. [RÚBRICA.]

ARISPE, 25 de Octubre de 1832.

Por presentado con el espediente que acompaña: dese cuenta con el informe conveniente, al Supremo Gobierno del Estado, en cumplimiento de lo prevenido en el articulo 28 de la Ley numero 30 de 20 de Mayo de 1825, para las providencias q. correspondan. El Tesorero general del Estado de Sonora, así lo proveyó, mandó y firmó con testigos de asistencia segun derecho.

MENDOZA. [RÚBRICA.]

Asa.: MARIANO ROMO. [RÚBRICA.]

Asa.: JOSE MARIA PEREZ. [RÚBRICA.]

ARISPE, 31 de Octubre de 1832.

Agreguese á este espediente copia de la consulta hecha al Supremo Gobierno, y la resolucion original de la misma superioridad, y espidase en su virtud el correspondte. titulo de merced á favor del ciudadano Rafael Elias, de los cuatro sitios de tierras del puesto de San Pedro. El Tesorero gral. del Estado así lo proveyó y firmó con testigos de assa. segn. dro.

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MENDOZA. [RÚBRICA.]

Asa.: LUIS CARRANCO. [RÚBRICA.]

Asa.: BARTOLO MIRANDA. [RÚBRICA.]

Tesoreria general del Estado de Sonora.—Escmo. Señor—El ciudadano Ygnacio Perez de esta vecindad, ha puesto en mis manos con el escrito respectivo, el espediente que tengo el honor de poner en las de V. E., comprensivo de registro, medidas, avaluo, pregones y remate de cuatro sitios de tierra, en el puesto nombrado rio abajo de San Pedro á favor del ciudadano Jose de Jesus Perez.—Justifica por la certificacion que tambien está agregada al espediente, que

pagó en la Tesoreria nacional de esta Capital la cantidad de doscientos ocho pesos un grano, por valor principal del terreno y sus respectivos derechos; y pide por último que mediante á haber permutado con el ciudadano Rafael Elias, se le espida este, el titulo de merced respectivo, cumpliendo á la vez con el arto. 27. de la ley numero 30. de 20. de Mayo de 1825., y esta Tesoreria al dar cuenta á V. E. en observancia del 28. de la misma ley, tiene el honor de manifestarle, que estima por bastante, legal, y concluido con las formalidades establocidas por las leyes, el espediente citado, y por consecuencia espedido para estenderse el titulo que solicita; sin embargo V. E. tendrá la dignacion de resolver lo que fuere de su superior agrado.—

Dios y Libertad Arispe 25. de Octubre de 1832.—

Jose Maria Mendoza.—Esmo. Señor Gobernador de este Estado.

Es copia. Arispe 25. de Octubre de 1832.

MENDOZA. [RÚBRICA.]

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N. 407.

Reconocido el Espediente de tierras, que V. S. acompaña á su nota de 25. del que fina, comprehensivo de cuatro sitios mensurados en el puesto nombrado Rio abajo de San Pedro, á favor de D. Jose Jesus Perez, lo devuelvo á V. S., á fin de que espida á Don Rafael Elias el Titulo de merced q. le corresponde, por permuta que le hize Don Ygnacio Perez de esta vecindad.

Dios y Libertad. Arispe octubre 31. de 1832.

YGNO. DE BUSTAMANTE. [RÚBRICA.]

LUCAS RODRIGZ. *Ofl.* 1°. [RÚBRICA.]

Sor. Tesorero general del Estado.

En 8. de Mayo de 1833. se espidió titulo de merced de los cuatro sitios de tierras que comprende el puesto nombrado San Pedro, de q. trata este espedte., á favor del ciudadano Rafael Elias.

MENDOZA. [RÚBRICA.]

(Endorsed :) Filed in the office of the clerk, court of private land claims, June 1, 1899. Jas. H. Reeder, clerk, by R. L. Long, deputy.

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DEFENDANT'S EXHIBIT 3.

Year of 1821.

Proceedings which comprise the place called San Pedro, situated in the jurisdiction of the presidio of Fronteras. N. 640.

335 Mr. Governor Intendent:

I, Don Jose de Jesus Perez, a resident of this capital, before Your Excellency, in conformity with law and in accordance with the royal ordinance of Campo, laws, sanctions and rescripts that treat of the royal and abbatial lands with which His Majesty (God pre-

serve him) protects his vassals, as perquisites of his royal patrimony, appear and state: That, whereas I enjoy some property, acquired in the military service and by my own industry, without owning a place upon which to locate and bring them together (centruarlos), I apply to the superior authority of Your Excellency (with prior permission of my father) in order that, pursuant to the provisions of the national laws and the terms of the royal cedula of February 14, 1805, the depopulated place down the San Pedro river, situate in this province, toward the north, on the hostile frontier, close to the abandoned place of Las Nutrias, be considered as registered, in virtue of which I protest that I will enter into composition with His Majesty (God preserve him) and will pay the quota or cost of its purchase, the royal half annate tax and whatever else may be necessary, for such is rigorous justice with relation to what is stated. In this understanding I pray you to issue commission for the execution of the necessary proceeding, ocular examination reconnoissance of the ground, survey, appraisement, publications, possession and final sale of the four sitios, which will be surveyed for me in a square or oblong figure according to the length or extent of the land and its direction, and in these terms I pray Your Excellency to defer to my just petition by which I shall receive grace. I protest costs and whatever is necessary, etc.

JOSE DE JESUS PEREZ. [RUBRIC.]

Alamos, March 12, 1821.—Being presented and admitted without prejudice to a third party, Don Nazario Gomez will proceed to the survey, appraisement and other customary proceedings, citing the adjoining owners, and when concluded he will report to me for such other proceedings as may be proper.

CORDERO. [RUBRIC.]

Fronteras, April 28, 1821.—Having received from the attorney Don Rafael Salas, the foregoing superior decree of commission, let the communication requesting permission and the necessary assistance, which the constitutional alcalde of this district must furnish, be forwarded by me in order to proceed to the survey. I, Don Nazario Gomez, judge commissioned, thus decreed, ordered and signed it, before my attending witnesses, according to law. I attest.

NAZARIO GOMEZ. [RUBRIC.]

Witness:

LUCIO GOMEZ. [RUBRIC.]

Witness:

FULGENCIO TELLES. [RUBRIC.]

Under date of the 29th instant the communication ordered in the foregoing minute was forwarded, and in witness thereof I entered this minute which I rubricked.

[RUBRIC OF NAZARIO GOMEZ.]

tion refusing the assistance sought by this court, in virtue of which and in view of his asking for the transmittal of the proceedings to his possession, in the following terms (among other things) he says: I expect of you that you will forward them to me in order to give due compliance to the superior decrees, for I cannot give permission for them to be surveyed by other than by myself, being under obligation to give reason for it whenever I am asked by my superior for the motives I had therefor, which I reserve until then, with which I reply to your four communications. With this understanding, upon his responsibility, I forwarded the present proceedings to him taking his receipt for the security of this court, and by these presents I so decreed and signed it according to law. I attest.

NAZARIO GOMEZ. [RUBRIC.]

Witness:

LUCIO GOMEZ. [RUBRIC.]

Witness:

FULGENCIO TELLES. [RUBRIC.]

Writ of obedience.—Fronteras, May 3, 1821.—Having received the foregoing superior decree delivered to this court by Don Nazario Gomez, in virtue of which, and the person of Don Rafael Salas having appeared before me as the attorney of the party in interest, Don Jose Jesus Perez, whose power of attorney I certify I have seen, I said: Proceed to the survey, for which purpose appoint a promotor fiscal, expert measurers, appraisers, and a recorder of courses, and inasmuch as in the persons of Don Lucio Gomez, Don Ramon Benitez, Don Teodoro Aros and Don Luis Aragon, reside the qualities of fitness, being known, practice, skill and information, I have concluded to appoint, as I do appoint, the first as promotor fiscal, for the reconnoissance of the ground, ocular examination and recommendations in behalf of the public treasury; the second and third, who are Benitez and Aros, for appraisers, and the fourth, Don Luis Aragon, for recorder of courses: In this understanding notify them of their appointments that they may be sworn and commissioned upon their acceptance, and in conformity with law and with what results, proceed to whatever else is required in justice. I, Don Miguel Teran, constitutional alcalde of this district and judge surveyor in this registry, so decreed, ordered and signed it, in the ordinary manner, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]
JULIAN MONTAÑO. [RUBRIC.]

Thereupon, I, the judge surveyor, in virtue of the foregoing order, summoned and there appeared in this court the person of Don Lucio Gomez, and I gave him notice of and made known to him his appointment as promotor fiscal of the public treasury for the survey, and when cognizant of it all, he said: He hears it and signed it with me and those in my attendance, in the ordinary manner, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]
LUCIO GOMEZ. [RUBRIC.]
JULIAN MONTAÑO. [RUBRIC.]

Thereupon, the person of Don Lucio Gomez, the promotor
 337 fiscal appointed, being present, I administered the oath to
 him, which he took in due form of law, before God, our Lord,
 and a holy cross, under the obligations and penalties of which he
 offered to proceed faithfully and legally to the discharge of his com-
 mission, promising not to defraud nor consent to anything against
 the perquisites that belong to the public treasury, which he will
 execute without imposition, fraud, collusion or deception, under the
 oath he has taken. He said he was over twenty years of age, mar-
 ried, a citizen, and signs it before me and those of my attendance,
 according to law. I attest.

MIGUEL TERAN. [RUBRIC.]
 LUCIO GOMEZ. [RUBRIC.]
 JULIAN MONTAÑO. [RUBRIC.]

I, the said alcalde and judge surveyor, in view of the acceptance
 and oath of the appointed promotor fiscal of the public treasury,
 Don Lucio Gomez, said: I would and do commission him to said
 office and would and do sanction it by my authority and judicial
 decree, and would and do give him therefor all the power and
 authority required by law, that is necessary, and can and ought to
 be available for him to perform, in the name of the public treasury,
 all the acts, commissions and proceedings which it of itself ought to
 do in the matter, and by these presents I so decreed, ordered and
 signed it in the ordinary manner. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the same day, month and year, I, the said alcalde and judge
 surveyor, in the presence of the appointed promotor fiscal, summoned
 and there appeared before me and in this court the persons ap-
 pointed, Don Ramon Benitez, Don Teodoro Aros and Don Luis Ara-
 gon, to whom being present I gave notice of and made known the
 appointment of measurers, appraisers and recorder of courses, and
 they said, each one separately and conjointly: That they would ac-
 cept and did accept said appointment and the promotor fiscal and
 the attending witnesses with whom I act according to law signed it
 before me. I attest.

MIGUEL TERAN. [RUBRIC.]
 LUCIO GOMEZ. [RUBRIC.]
 TEODORO AROS. [RUBRIC.]
 RAMON BENITEZ. [RUBRIC.]
 LUIS DE ARAGON. [RUBRIC.]
 JULIAN MONTAÑO. [RUBRIC.]

Thereupon, in the presence of the appointed promotor fiscal, and
 in virtue of the acceptance made by Don Ramon Benitez, Don
 Teodoro Aros and Don Luis Aragon, in their own persons, whom I

certify I know, and to each of them, severally and jointly, I administered the oath, which they took in due form of law, before God, our Lord, and a holy cross, under the obligation and penalties of which they promised to proceed faithfully and lawfully, according to their best understanding and intelligence, to the just appraisement of the tract, without using therein fraud or imposition, and in witness thereof and observance of the attribute the promotor fiscal
 338 and those of my attendance with whom I act in the ordinary manner, according to law, signed it before me. I attest.

MIGUEL TERAN. [RUBRIC.]
 LUCIO GOMEZ. [RUBRIC.]
 RAMON BENITEZ. [RUBRIC.]

Witness-:

LUIS DE ARAGON. [RUBRIC.]
 JULIAN —TAÑO. [RUBRIC.]

In view of the acceptance and oath taken by the appraisers, and the recorder, set out in the foregoing proceedings, I said: I would and do commission them to the office of expert measurers, appraiser, and recorder, which I would and do sanction by my authority and judicial decree, giving them, as I do give them, by these presents, all the power and authority necessary for them to examine the lands, their pastures, timber, water holes, and watering places, and to appraise and to fix their just value according to their quality and circumstances with the legality and scrupulousness the matter requires, and by these presents I so decreed, ordered, and signed it with those in my attendance, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]
 TEODORO AROS. [RUBRIC.]

Witness:

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the third day of the month of May, I, said alcalde and judge surveyor, in these proceedings, said: That, in view of the conclusion of these proceedings of appointment of assistants necessary for the work, inasmuch as there are no adjoining owners to summon, put up public notices summoning whomever might be thought to have a right, and by these presents let it be understood for the sixth instant, at which time the justice they demand and which favors them will be heard, attended to, and respected, and by these presents I so decreed, ordered and signed it in the ordinary manner. I attest.

MIGUEL TERAN. [RUBRIC.]
 JULIAN MONTAÑO. [RUBRIC.]

Thereupon, the public notice of summons provided for in the foregoing minute was put up, and in due witness thereof and that it may serve the purposes of the law, I entered this minute, to which I attach my rubric.

[RUBRIC OF MIGUEL TERAN.]

Having summoned Don Manuel Antunes and he having replied on the 17th instant, as will be seen by his communication, which I order aggregated to the proceedings that it may serve the purposes of the law, likewise await his presence for the execution of the survey. And by these presents I so decreed, ordered, and signed it, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]
 LUCIO GOMEZ. [RUBRIC.]
 JULIAN MONTAÑO. [RUBRIC.]

339 Replying to your communication of the 16th instant, I will appear personally at the place to which I am summoned, at the survey of the lands which, on account of Don Jose de Jesus Perez, is being made on the San Pedro river, and I will there point out the lands which I find myself in disposition to immediately register until the final proceedings of composition with His Majesty are had, and in case said survey conflicts with the lands I shall point out and have held for the space of two years with my cattle, in that event I shall enter into opposition and contest for them as may be convenient to me. God preserve you many years.

Place of Terrenate, May 17, 1821.

MANUEL ANTUNES. [RUBRIC.]

Mr. Constitutional Alcalde, Miguel Teran.

In the field, place of San Pedro, on the 18th day of the current month and year, I, said alcalde, in the presence of the promotor fiscal, measurers, appraisers and recorder, before those in my attendance, Don Manuel Antunes having appeared in person and stated that they could proceed to the survey from the house of San Pedro down the river without any damage resulting to him in said direction, but going up the river he would be damaged as he considered himself possessed of rights and the lands he has held included in the sitios which he expects from day to day will be adjudicated to him, to which, when stated by said Antunes and noticed by the attorney, Don Rafael Salas, the latter took exception on account of the delay that would result to the prejudice of his party by depriving him of the benefit of the water produced by the marsh (cienega) which is the mother of these pastures (ejidos), for which reason the survey in behalf of his principal would be useless; upon which operations Antunes and Salas contended until after being reconciled, to obviate inconveniences, expenses and damages which might result to either of the parties in interest, they yielded and agreed to divide the water of the marsh in halves for the benefit of the farms, being obligated by this same act to preserve harmony, for they so obligated themselves, Antunes for himself and Salas in the name of his principal, in testimony of which I entered it as a minute which the promotor fiscal, and other assistants signed with me before those in my attendance with whom I act in the ordinary manner, in default of a

royal or public notary, there being none in the terms the law provides, to all of which I certify.

MIGUEL TERAN.

LUCIO GOMEZ.

RAFAEL SALAS.

RAMON BENITEZ.

TEODORO AROS.

JULIAN MONTAÑO.

[RUBRIC.]
[RUBRIC.]
[RUBRIC.]
[RUBRIC.]
[RUBRIC.]
[RUBRIC.]

On the same day, month and year, being in the field and the parties in interest having agreed, in the presence of the promotor fiscal and other assistants, I caused a monument to be placed at a rectangular corner, from which, taking the course southwest to northwest, there were measured and counted fifty cords the last of which terminated down the river from the house, on the edge of the ford, on the bank, where I had a cross monument placed, and from there there were measured and counted fifty cords the last of which
340 terminated in the same valley, at the edge of a hillock (loma), distant three cords, where I had a corner monument placed, and from it there were measured and counted fifty cords the last of which terminated in front of the Gaachuea mountains, where I had a cross monument placed on a rocky hillock (loma), and from it there were measured and counted fifty cords the last of which terminated on a cat's-claw (chinosa) table-land where I had a corner monument placed, and from there there were measured and counted fifty cords the last of which terminated in the canyon of the Bachata (where I had a cross monument placed, general boundary and dividing rectangular corner, this side line enclosing, and in the figure of a true square, two hundred cords which make two and a half leagues;) and from there, the compass being set up and taking the course northwest to southwest, there were measured and counted fifty cords the last of which terminated in the middle of the valley of the San Pedro river, where I had a corner monument placed, and from there, on said course, there were measured and counted fifty cords the last of which terminated, just after crossing the river, at the edge of a hillock (loma), where I had a cross monument placed, and from it there were measured and counted fifty cords the last of which terminated in the Arroyo de las Baras, where I had a corner monument placed, and from it there were measured and counted another fifty cords the last of which terminated in a thicket of dark brush where I had a cross monument placed, and from it there were measured and counted fifty cords the last of which terminated on the slope of the peak, where I had a monument placed, a general rectangular corner, this measurement enclosing two hundred and fifty cords which make two and a half leagues for its side, with which, because of being now late, this operation was suspended to be continued the following day. In testimony of which I entered it as a minute, which I signed with the promotor fiscal, assistants,

party in interest and those in my attendance with whom I act in the ordinary manner. I attest.

MIGUEL TERAN.	[RUBRIC.]
LUCIO GOMEZ.	[RUBRIC.]
JOSE RAFAEL SALAS.	[RUBRIC.]
TEODORO AROS.	[RUBRIC.]
RAMON BENITEZ.	[RUBRIC.]
JULIAN MONTAÑO.	[RUBRIC.]

On the 19th day of said month and year, in the presence of the promotor fiscal and other assistants, being in the field, at the monument at the general rectangular corner and taking the course from northwest to southwest, there were measured and counted fifty cords the last of which terminated in a dense thicket of brush, where I had a cross monument placed, and from it there were measured and counted another fifty cords, the last of which terminated on the Arroyo del Malpais, where I had a corner monument placed, and from it there were measured and counted fifty cords the last of which terminated on the rise to a red table-land, where I had a cross monument placed, and from it there were measured and counted fifty cords the last of which terminated on the same table-land, where I had a monument placed, a general boundary and dividing rectangular corner, and from it, taking the course from southwest to northwest, there were assumed to be enclosed and measured two hundred and fifty cords, which make two and a half leagues; with which operation there were located, the sides measured, surveyed and the area determined of four sitios of land for large stock
341 without any prejudice resulting, thanks to the concurrence of the adjoining owner, and that it may serve the purposes of the law I entered it as a minute, which I signed with the promotor fiscal, assistants, party in interest and those in my attendance with whom I act in the ordinary manner according to law. I attest.

MIGUEL TERAN.	[RUBRIC.]
LUCIO GOMEZ.	[RUBRIC.]
JOSE RAFAEL SALAS.	[RUBRIC.]
TEODORO AROS.	[RUBRIC.]
RAMON BENITEZ.	[RUBRIC.]
JULIAN MONTAÑO.	[RUBRIC.]

San Pedro, May 21, 1821.—And this survey being concluded I said: Proceed to the appraisement and valuation, which shall be made by the expert appraisers, Don Ramon Benitez and Don Teodoro Aros, after the acceptance of their office, and thereafter proceed to whatever else is required by law. And by these presents I so decreed, ordered and signed it in the ordinary manner. I attest.

MIGUEL TERAN.	[RUBRIC.]
JULIAN MONTAÑO.	[RUBRIC.]

Consequently, and in virtue of the foregoing order, in the presence of the promotor fiscal appointed, the appraisers being present, Don Ramon Benitez and Don Teodoro Aros, I notified them, in their own persons, to appraise and fix the value, in virtue of the office they

had accepted, of the tract this survey covers, and when cognizant of it they said, severally and jointly, that, in view of the ocular inspection and reconnoissance they had made of the lands at the time of their survey, they appraised them, the first three at sixty dollars each and the remaining one at ten dollars; that according to their best intelligence and understanding this valuation is just and legitimate, both on account of the situation of the lands and because they are the common entrance and exit of barbarous enemies, that this consideration, together with that of being public and notorious, which is common and well known, gives the true difficulty; in the understanding that in this operation they proceeded to what the actual circumstances at present dictate, without there being fraud, deception, collusion, or deceit, force or fear therein; for they consider only the oath they have taken. In testimony of which they so executed and signed it with me, the promotor fiscal, and those in my attendance, with whom I act in the ordinary manner.

MIGUEL TERAN.	[RUBRIC.]
LUCIO GOMEZ,	[RUBRIC.]
TEODORO AROS.	[RUBRIC.]
RAMON BENITEZ.	[RUBRIC.]
JULIAN MONTAÑO.	

The four sitios of land for large stock being appraised and valued, I said: Forward these proceedings to the promotor fiscal appointed for him to deduce, according to their condition, what he considers proper to the benefit of the public treasury. And by these presents

I so decreed, ordered and signed it according to law. I attest.

342	MIGUEL TERAN.	[RUBRIC.]
	JULIAN MONTAÑO.	[RUBRIC.]

Mr. Judge Surveyor:

The promotor fiscal appointed in this cause says: That, as he has with his own eyes explored the land, examined its situation, frontier, line, and more or less abundance of pasture, timber, and extent of the ground, he judges as just, legal and without burden whatever to the public treasury, for it and all the nation will be benefitted by the protection and settlement of these lands; that in this understanding he is of opinion that the corresponding information as to ability be received, for which you will summon three disinterested and truthful witnesses and that they, after qualifying, state:

1st. If they know the party, and whether the general qualifications of the law apply to them.

2nd. If they know, are aware or have heard said that the denouncer, Don Joseph Jesus Perez, has sufficient property with which to protect these sitios.

3rd. Finally, whether great advantages will result to the public treasury by their protection and settlement.

And when executed you will be pleased to refer them to me to deduce what concerns public rights. The undersigned states this at present.

Fronteras, May 22, 1821.

LUCIO GOMEZ. [RUBRIC.]

Proceed to receive the information which the promotor fiscal appointed solicits, to which end summon the persons of Don Jose Hoyos, Don Felix Quijada and Don Francisco Ramirez, from whom, in the presence of the petitioner, will be received their sworn declarations as solicited, and when done whatever else is required will be proceeded with, and by these presents I so ordered and signed it, according to law.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

Thereupon, I summoned and there appeared in this court Don Jose Hoyos, to whom, in the presence of the promotor fiscal, the oath was administered, which he took in due form of law, before God, our Lord, and a holy cross, under the responsibility of which he promised to tell the truth in so far as he knew and is questioned, and being questioned in the tenor of the foregoing interrogatory, he said to the first:

That he knows the person of Don Jose Jesus Perez, that the general qualifications of the law do not apply to him, and responds

To the second: That he knows and is aware that he has sufficient property to protect and settle the lands, as it is public and notorious, and he responds

To the third: That in his opinion it is beneficial both to the public treasury and to the entire nation, since therefrom will result, without obstacle, traffic, commerce and industry and other

liberal and industrial arts, that this is the truth on the strength of the oath he has taken. He said he is married, twenty-nine years of age, a citizen, and signed it with me and those in my attendance, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]
JOSE HOYOS. [RUBRIC.]

Witness:

RAFAEL YESCAS. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

Thereupon, I summoned and there appeared in this court Don Felix Quijada and in his own person, whom I certify I know, I administered to him the oath, which he took in the presence of the promotor fiscal, before God, our Lord, and a holy cross, under the obligation of which he promised to tell the truth in so far as he knew and is questioned and, being questioned in the tenor of the foregoing interrogatory, he said to the first:

That he knows Don Jose Jesus Perez and that the qualifications of the law do not apply to him.

To the second: That he knows by hearsay that the party registering has sufficient stock to stock and protect the tract mentioned and he replies

To the third : That the advantages that would result to the public treasury and to the whole nation from the protection of abandoned and depopulated places are public and notorious and matters of public talk and report and common opinion ; that this is the truth on the strength of the oath he has taken. He said he was unmarried, twenty-five years of age, a citizen, and signed it before me and those in my attendance, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]
FELIX QUIJADA. [RUBRIC.]

Witness:

RAFAEL YESCAS. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the same day, month and year, I summoned and there appeared the person of Don Francisco Ramirez to whom, in the presence of the promotor fiscal, I administered the oath which he took in due form of law, before God, our Lord, and a holy cross, under the obligation of which he promised to tell the truth in so far as he knew and is questioned, and being questioned in the tenor of the foregoing interrogatory, he said :

To the first: That he knows Don Jose Jesus Perez and that the general qualifications of the law do not apply to him.

To the second: That he knows by hearsay that he has sufficient stock for the protection and stocking of this tract.

To the third: That the advantage that would result to the public treasury and to all the nation by its settlement is clearly undeniable and that this is the truth according to his judgment. He said he was married, forty years of age, a citizen, and did not sign because he does not know how. I did so with those in my attendance with whom I act in the ordinary manner, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FEJIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

And this information asked for by the promotor fiscal being concluded, I said : Return it to the possession of said promotor
344 for him to deduce what he deems convenient. I so decreed and signed it according to law.

MIGUEL TERAN. [RUBRIC.]

Mr. Judge Surveyor :

Don Lucio Gomez, the promotor fiscal appointed for this survey, says: That, in view of the condition of the proceedings, and that from them, according to their supposed condition, the protection and settlement of the tract of San Pedro result to the benefit of the public treasury and of all the nation, in consideration of the rights of said nation and that it may be acquired, adjudicated and sold to the

best and highest bidder, you will be pleased to publish for thirty consecutive days the appraisement at which they are, admitting the bids, raises and higher offers that result and holding their rights in reserve till the day of their final disposition and sale, which shall be at the capital at Arispe, before the provincial board of the royal treasury, presided over by the governor intendent of the province, who shall previously set a day for the sale, and do everything else required by the custom of universal legal practice, according to law. This is all the undersigned has to state submitting his judgment to the probity of the wise government and to the learning of the deputy legal adviser of the province.

Fronteras, May 26, 1821.

LUCIO GOMEZ. [RUBRIC.]

Fronteras, May 27, 1821.—Having examined the opinion of the promotor fiscal appointed, I said: Publish the tract of San Pedro and its appraisement admitting the bids, raises and higher offers that may be made, and by these presents I so decreed, ordered and signed it, according to law.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On said day, month and year, I, the judge surveyor, caused Lazaro Quijada, at the sound of the drum and in a clear, loud and distinct voice, to announce: It is made public and notorious that Don Jose Jesus Perez has registered the place of San Pedro and, his petition being admitted, there were measured and located and sold four sitios of land for large stock, which were appraised and valued in the sum of one hundred and ninety dollars, in virtue of which every one who believes he has a well-founded right or desires to make a bid for the land mentioned may apply, as his bid will be admitted and his actions reserved till the day of the disposition and sale, which will be in Arispe on the day designated by the governor intendent of the province, to which end his actions and rights are reserved, and no bidder having appeared I entered it as a minute which I signed with those in my attendance, according to law, as I certify, and on this paper without prejudice to the royal revenue.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

345 On the 28th day of said month and year, I, said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the

voice of the public crier, and there being no bidder I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 29th day of said month I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 30th of the current month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 31st day of said month and year, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidders I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 1st of the month of June of the year 1821, I, the alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and the voice of the public crier, and there being no bidder, I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 2nd day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed with those in my attendance, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 3rd day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 4th day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidders, I entered it as a minute which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 5th day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 6th day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier,

and there being no bidder, I entered it as a minute which I signed with those in my attendance, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 7th of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 8th of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 9th day of said month, I, said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

347 Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 10th day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 11th day of said month and year, I, the judge surveyor, caused Lazaro Quijada to announce, at the sound of the drum and in a loud, clear and distinct voice: It is made public and notorious that Don Jose Jesus Perez has registered the place of San Pedro and, his petition being admitted, there were measured and located and sold four sitios of land for large stock, which were appraised and valued in the sum of one hundred and ninety dollars, in virtue of which every one who believes he has a right to the tract or desires to make a bid for the land mentioned may apply, as his bid will be admitted and his actions reserved till the day of the disposition and sale, which will be at Arispe on the day designated by the governor intendent of the province, for which purpose his actions and rights are reserved, and no bidder having appeared, I entered it as a minute which I signed with those in my attendance, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 12th day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 13th day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 14th of said month, I, the alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

348 On the 15th day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness :

FELIX QUIJADA. [RUBRIC.]

Witness :

JULIAN MONTAÑO. [RUBRIC.]

On the 16th day of said month, I, said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness :

FELIX QUIJADA. [RUBRIC.]

Witness :

JULIAN MONTAÑO. [RUBRIC.]

On the 17th day of said month, I, said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness :

FELIX QUIJADA. [RUBRIC.]

Witness :

JULIAN MONTAÑO. [RUBRIC.]

On the 18th day of said month, I, said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness :

FELIX QUIJADA. [RUBRIC.]

Witness :

JULIAN MONTAÑO. [RUBRIC.]

On the 19th day of the current month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the

public crier, and there being no bidder, I entered it as a minute which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness :

FELIX QUIJADA. [RUBRIC.]

Witness :

JULIAN MONTAÑO. [RUBRIC.]

On the 20th day of said month, I, said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness :

FELIX QUIJADA. [RUBRIC.]

Witness :

JULIAN MONTAÑO. [RUBRIC.]

On the 21st day of this month, I, the said alcalde, caused
349 the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness :

FELIX QUIJADA. [RUBRIC.]

Witness :

JULIAN MONTAÑO. [RUBRIC.]

On the 22nd day of said month, I, said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness :

FELIX QUIJADA. [RUBRIC.]

Witness :

JULIAN MONTAÑO. [RUBRIC.]

On the 23rd day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness :

FELIX QUIJADA. [RUBRIC.]

Witness :

JULIAN MONTAÑO. [RUBRIC.]

On the 24th day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 25th day of said month, I, said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 26th day of the current month and year, I, the constitutional alcalde and judge surveyor of this grant, said: The proceedings corresponding to the survey being completed, forward them to the superior authority of the governor intendent, for His Excellency to make such orders as meet his superior pleasure and by these presents I so decreed, ordered and signed it before those in my attendance and on this paper without prejudice to the public revenue. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

JOSE HOYOS. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

350 Mr. Governor Intendent:

I transmit to your hands the proceedings of survey, ocular inspection, appraisement and publications executed on the depopulated tract of San Pedro in favor of Don Jose Jesus Perez for Your Excellency to make such order as may be just. God preserve Your Excellency many years.

Fronteras, June 26, 1821.

MIGUEL TERAN. [RUBRIC.]

Mr. Governor Intendent, Don Antonio Cordero.

ARIZPE, *June 9, 1821.*

To the promotor fiscal—Cordero.

Mr. Intendent :

The promotor fiscal of this intendency says : That these proceedings of survey, appraisement, valuation, information of ability and publications of four sitios of royal land for raising large stock comprised in the place called San Pedro, situate in the jurisdiction of the presidio of Fronteras, appraised in the sum of one hundred and ninety dollars, at the rate of sixty dollars each for the first three and ten dollars for the remaining one, are executed in full conformity with the royal and superior orders that are a rule in the matter. This being understood, and in attention to the merit which of itself is involved in the granted petition of the party in interest, because that royal tract is so much the more dangerous on account of the Apache enemy who hostilizes that frontier, the settlement of the same is so much the more convenient and advantageous, the fiscal defender of the public treasury asks that you be pleased, if you think proper, to order that, upon citation of the parties, the celebration of the three customary public offers be proceeded with in this capital, in solicitation of bidders for the final sale of said surveyed lands, which shall be determined at the last of them in favor of the highest and best that results, and he shall be made to understand that he must pay into the treasury the principal value at which said four sitios were sold to him, their half annate tax and 18 per cent. for transmittal, the 2 per cent. ordered collected as a general tax and three dollars for the officers aggregated to the office of the auditor general of the army, and that when these proceedings are examined and approved in the provincial board, the corresponding certificate being aggregated to it as a voucher for said payment, let report be made therewith to the superior board for the decision that is proper. This is my opinion, which has not been issued from the fiscal office till today, because the proceedings have been involuntarily mislaid therein, but you, nevertheless, will decide what meets your superior pleasure.

Arizpe, June 25, 1822.

FRANCISCO PEREZ. [RUBRIC.]

Arizpe, July 3, 1822.—As appears to the promotor fiscal of this intendency in his foregoing reply, proceed to the celebration of the three public offers and sale of the lands called San Pedro of which these proceedings treat, first summoning the attorney of the party in interest, Don Jose Maria Serrano. The intendent of this province so decreed, ordered and signed it with attending witnesses in
 351 default of every kind of notary.

BUSTAMANTE. [RUBRIC.]

Witness :

JOAQUIN ELIAS GONZALEZ. [RUBRIC.]

Witness :

ANTONIO APALATEGUI. [RUBRIC.]

Thereupon, Don Jose Maria Serrano being present, he was notified of the fiscal opinion and the order in concurrence which precedes and made himself cognizant thereof and signed it with the intendent and his attending witnesses.

BUSTAMANTE. [RUBRIC.]

Witness:

JOAQUIN ELIAS GONZALEZ. [RUBRIC.]

Witness:

ANTONIO APALATEGUI. [RUBRIC.]

1st offer.—In the city of Arizpe, on the 3rd day of the month of July, there having assembled as a board in this said capital the intendent, as president, and the members who compose it, for the purpose of making the first offer of the lands to which these proceedings refer, they caused many individuals to be assembled, at the sound of the drum, in the office of this intendency, and the public crier, Loreto Salcido, to proceed, in their presence, to make a publication, as he in effect did, saying in a loud and clear voice: There are going to be sold by this board of sales four sitios of royal land for raising cattle comprised in the place called San Pedro, situate in the particular territory of the presidio of Fronteras, surveyed for Don Jose Jesus Perez of this city, and appraised in the sum of one hundred and ninety dollars, at the rate of sixty dollars each for the first three and ten dollars for the other one. Whoever wishes to make a bid for said royal land, come forward and make it before this board where that made in regular form will be admitted, with the understanding that in the third and last offer, which is to be made the day after tomorrow, the final sale will be made to the best and highest bidder. And no bidder having appeared, it was entered as a minute which the president and members of this board of sales signed.

BUSTAMANTE.	[RUBRIC.]
FUENTE.	[RUBRIC.]
ELIAS GONZALEZ.	[RUBRIC.]
PEREZ.	[RUBRIC.]

2nd offer.—In said city on the 4th day of said month and year, the making of the second offer in these proceedings was proceeded with, being made in the same terms as the first preceding, with only the difference of stating to the public that the final sale would be made tomorrow. But no bidder having appeared, it was entered as a minute which the president and members of this board of sales signed.

BUSTAMANTE.	[RUBRIC.]
FUENTE.	[RUBRIC.]
ELIAS GONZALEZ.	[RUBRIC.]
PEREZ.	[RUBRIC.]

3rd offer.—In the city of Arizpe, on the 5th day of the month of July, 1822, having assembled as a board of sales in this said capital the intendent, as president, and the members who compose it for the purpose of making the third and last offer

of the lands to which these proceedings refer, they caused many individuals to assemble, at the sound of the drum and the voice of the public crier, in the office of this intendency and Loreto Salcido to proceed to make, in their presence, a publication, as he in effect did, similar in all respects to the one set out in the preceding offer, with only the difference of announcing to the public that the final sale is now to be made to the highest and best bidder. In which act appeared Don Jose Maria Serrano as attorney of Don Jose Jesus Perez again offering the value of the land, and the hour for mid-day prayer of this day having already been struck, the public crier finally said: Once, twice, three times; sold, sold, sold; may they do good, good, good to Don Jose Jesus Perez. In these terms this act was concluded, the four sitios of royal land referred to in these proceedings being solemnly sold in favor of this party in interest for the sum of one hundred and ninety dollars and in due witness thereof this minute was entered which the president and members of this board of sales signed with the attorney, Don Jose Maria Serrano.

BUSTAMANTE.

FUENTE.

ELIAS GONZALEZ.

PEREZ.

[RUBRIC.]

[RUBRIC.]

[RUBRIC.]

[RUBRIC.]

Arizpe, July 6, 1822.—Forward these proceedings by way of reference with a testimonio authenticated and inclusive of the superior determinations that govern in the matter to the attorney, Don Jose Maria Serrano, for him to proceed, within three days, to state, in favor of his party, whatever occurs to him in the present matter, notifying him to appoint in Mexico a person under pay to attend to it at that court. The intendent *ad interim* of this province so decreed and signed it with attending witnesses.

BUSTAMANTE. [RUBRIC.]

Witness:

JOAQUIN ELIAS GONZALEZ. [RUBRIC.]

Witness:

ANTONIO APALATEGUI. [RUBRIC.]

NOTE.—On said day, month and year, these proceedings and said testimonio were delivered, on — written leaves, to said attorney.

[RUBRIC OF BUSTAMANTE.]

Mr. Intendent:

I, Don Jose Maria Serrano, as attorney of Don Jesus Perez, a resident of this place, appear before you and state: That I promptly return these proceedings on the lands called San Pedro and the testimonio that have been referred to me, stating that I am satisfied with what has been done up to their actual condition of sale, as they are fully in conformity with the superior orders that govern in the matter and are included in said testimonio, and it only remains for me to pray you to be pleased to provide for the prompt conclusion and conduct of these proceedings so that, when the approval of the

353 superior board of the treasury is obtained, there may be issued in favor of my party the corresponding title of grant and confirmation of the four sitios which said land contains, being prompt to appoint in Mexico a person under pay and expenses to be charged with managing the present matter at that court. Therefore I ask and pray you to be pleased to order as I request, as my party will thereby receive grace and favor in whose conscience I swear there is no bad faith, etc.

JOSE MARIA SERRANO. [RUBRIC.]

Order upon examination.—In the city of Arizpe, on the 6th day of July, 1822, the intendent *ad interim* of these provinces of Sonora and Sinaloa, proprietary treasurer, Don Ignacio de Bustamante y Velasco, having examined these proceedings of survey, appraisement, publications, offers and sale of the lands called San Pedro, surveyed for raising large stock and horses in behalf of Don Jose Jesus Perez, a resident of this city, and situated in the particular territory of Fronteras, the reply given by his attorney, Don Jose Maria Serrano, in the foregoing communication, with everything else set out and proper to examine, said: That declaring, as he declares, the said proceedings sufficient, conformable and in accordance with the superior orders that govern in the matter and admitting, as he at once admits, the said Don Jose Jesus Perez to composition with the imperial treasury for said royal land, it was his duty to order and he did order that his attorney be notified and informed to proceed to pay into this treasury the sum of two hundred and eight dollars, one grain, in this form: one hundred and ninety dollars as the principal value at which there were sold to said party in interest the four sitios which said tract comprises; eleven dollars, one real, eight grains, for the half annate tax and their 18 per cent. for transmittal; three dollars, six reals, five grains, being the two per cent. ordered collected as a general tax, and the remaining three dollars as perquisites of the extinguished office of auditor of said revenue, and when this payment is made and the corresponding certificate as a voucher therefore is attached to these proceedings, report with the same to the superior board of the treasury for its approval or the decision that is proper. The intendent by this order upon examination so provided, ordered and signed it with attending witnesses, in default of a notary.

BUSTAMANTE. [RUBRIC.]

Witness:

JOAQUIN ELIAS GONZALEZ. [RUBRIC.]

Witness:

ANTONIO APALATEGUI. [RUBRIC.]

Thereupon, the attorney, Don Jose Maria Serrano, being present, he was notified of the foregoing order of which he made himself cognizant and signed it with the intendent and attending witnesses.

BUSTAMANTE. [RUBRIC.]

Witness:

JOAQUIN ELIAS GONZALEZ. [RUBRIC.]

Witness:

ANTONIO APALATEGUI. [RUBRIC.]

Provincial board of the imperial treasury.

ARIZPE, July, 7, 1822.

Approved.—Let it be declared at once that there have been legally, publicly and solemnly sold by the board of sales in this capital, on the 5th instant, in favor of Don Jose Jesus Perez, the four sitios of royal land for raising large stock which the
 354 place called San Pedro comprises, situated in the particular territory of the presidio of Fronteras, for the sum of one hundred and ninety dollars, being their just value, and in consequence report with these proceedings to the superior board of the treasury for its approval or the decision that may be proper, as ordered by this intendency in its foregoing order. The president and members of this provincial board so ordered and signed it.

BUSTAMANTE.

FUENTE.

ELIAS GONZALEZ.

PEREZ.

[RUBRIC.]

[RUBRIC.]

[RUBRIC.]

[RUBRIC.]

Arizpe, July 7, 1822.—Comply with the resolution of the provincial board of this intendency in its foregoing resolution of today.

BUSTAMANTE. [RUBRIC.]

Antonio Carrillo, commissary of the branch of the treasury in Arizpe in the internal State of Sonora,

Certifies: That at folio 55 of the hand book of receipts and disbursements for the year 1822, there is made the following entry :

July 8.—Receipt of two hundred and eight dollars, one grain, paid into this treasury by Don Jose Maria Serrano, in the name of and as the attorney of Don Jose Jesus Perez, a resident of this city, in this form: 190 dollars as the principal value at which were sold to him by this intendency four sitios of royal land for raising large stock comprised in the place called San Pedro, situated in the particular territory of the presidio of Fronteras; 11 dollars, 1 rl. 8 gr. for the half annate tax and its 18 per cent.; 3 dollars, 6 rs. 5 gr. for the 2 per cent. ordered collected as a general tax, and the remaining three dollars as the perquisites of the extinguished office of the auditor of said revenue, as explained in the communication of said intendency marked No. 30..... \$208.0.1

FUENTE.

GONZALEZ.

JOSE MARIA SERRANO.

And in witness thereof wherever necessary I give the present certificate in duplicate at the request of the treasurer general of the State, Don Jose Maria Mendoza, on this common paper, in default of the official, in Arizpe, on the 25th of October, 1832.

ANTONIO CARRILLO. [RUBRIC.]

Mr. Treasurer General:

I, Ignacio Perez, in the name of my brother, Jose de Jesus, appear before you in due form and state: That from the original proceed-

ings which I place in the hands of Your Excellency you will have the kindness to inform yourself that on the 5th of July, 1822, there was sold in favor of my brother the land called San Pedro, situated in the jurisdiction of Fronteras, including four sitios of land and having lawfully exchanged the right he had thereto with
 355 citizen Rafael Elias and inasmuch as the corresponding title to the grant has not yet been issued, I ask and pray you to be pleased to order the corresponding title issued to said citizen Rafael Elias, as the actual owner and proprietor of the land of San Pedro. It is grace I ask of Your Excellency protesting there is no bad faith.
 Arizpe, October 25, 1832.

IGNACIO PEREZ. [RUBRIC.]

Arizpe, October 25, 1832.—Presented with the accompanying proceedings, give account with the necessary report to the supreme magistrate of the State, in compliance with the provisions of article 28 of law No. 30 of May 20, 1825, for the corresponding orders. The treasurer general of the State of Sonora so provided, ordered and signed it with attending witnesses, according to law.

MENDOZA. [RUBRIC.]

Witness:

MARIANO ROMO. [RUBRIC.]

Witness:

JOSE MARIA PEREZ. [RUBRIC.]

Arizpe, October 31, 1832.—Aggregate to these proceedings a copy of the consultation sent to the supreme magistrate and the original resolution of said superior authority and issue in virtue thereof the corresponding title to the grant in favor of citizen Rafael Elias, for four sitios of land at the place of San Pedro. The treasurer general of the State so provided and signed it with attending witnesses, according to law.

MENDOZA. [RUBRIC.]

Witness:

LUIS CARRANCO. [RUBRIC.]

Witness:

BARTOLO MIRANDA. [RUBRIC.]

Treasurer General of the State.

MOST EXCELLENT SIR: Citizen Ignacio Perez of this place has put in my hand, with the corresponding application, the proceedings which I have the honor to place in the hands of Your Excellency, comprehensive of the registry survey, appraisement, publications, and sale of four sitios of land, at the place called down the San Pedro river, in favor of citizen Jose de Jesus Perez. He also shows by the certificate, which is likewise aggregated to the proceedings, that he paid into the national treasury in this capital the sum of two hundred and eight dollars, one grain, for the principal value of the land and its corresponding taxes; and he asks finally that, having made an exchange with citizen Rafael Elias, the corresponding

title for the grant be issued to him, complying at the same time with article 27 of law No. 30 of May 20, 1825, and this treasury in reporting to Your Excellency in compliance with the 28th of said law, has the honor to state to you that it considers said proceedings sufficient, legal, and concluded with the formalities established by the laws and consequently in condition for the issue of the title asked for, nevertheless, Your Excellency will deign to decide whatever meets your superior pleasure.

God and Liberty. Arizpe, October 25, 1832.

JOSE MARIA MENDOZA.

His excellency, the governor of the State.

It is a copy. Arizpe, October 25, 1832.

MENDOZA. [RUBRIC.]

356 A seal which reads: Government of the free State of Sonora.

Having examined the proceedings on the lands which Your Excellency transmits with your note of the 25th ultimo, comprehensive of four sitios surveyed at the place called down the San Pedro river, in favor of Don Jose Jesus Perez, I return it to Your Excellency for you to issue to Don Rafael Elias the corresponding title for the grant, in view of the exchange Don Ignacio Perez of this place has made with him.

God and Liberty. Arizpe, October 31, 1832.

IGNACIO BUSTAMANTE. [RUBRIC.]
LUCAS RODRIGUEZ, [RUBRIC.]
Chief Clerk.

Mr. Treasurer General of the State.

(Endorsed :) Filed in the office of the clerk, court of private land claims, June 1, 1899. Jas. H. Reeder, clerk, by R. L. Long, deputy.

357 DEFENDANT'S EXHIBIT 5.

Testimonio of the proceedings of denouncement of the land called San Pedro, adjudicated in favor of citizens Manuel and Jose Maria Elias and heirs of Don Jose Juan Elias, Rafael, Carlos, Manuel, Alejandro, and the Misses Jesus and Dolores, all Elias.

Defendant's Ex. No. 5.

358 Citizen district judge:

I, Jose A. Marquez, as attorney of citizen Manuel Elias, a resident of Tecoripa, according to the public instrument which I exhibit and request be returned to me because it is general, before your honor and as may be most conformable to law, state: That, in the name of my principal, Manuel Elias, I make the most formal denouncement of the overplus (demasias) there may be in the ranch of San Pedro, in the jurisdiction of the town of Santa Cruz, in the district of Magdalena, of which ranch my principal is co-owner.

Therefore, I request that, considering me as having appeared with

the present application, you be pleased to admit it and to notify the surveyor to execute the survey and delimitation, to the end that titles for said overplus (demasias) may be delivered to me, on my promise to pay the public treasury, for my said principal, the charges that may be just.

I protest good faith.

Guaymas, July 8, 1880.

J. A. MARQUEZ.

On the same date what was ordered in the foregoing order was complied with. Attest.

[A RUBRIC.]

On July 20th I certify to have seen and returned to the party in interest a general power of attorney executed by citizen Manuel Elias and Mrs. Eloisa Suarez, his wife, in favor of citizen Manuel Aguayo, in the town of Tecoripa, the second of the current month, declared sufficient by Licentiate Ramon Martinez on the 7th instant; it contains the clauses of a power of its character and the corresponding stamps duly canceled. On the same 7th of July this power of attorney was delegated by citizen Aguayo to citizen Jose A. Marquez, at this port, before the notary public, Licentiate Jose Monteverde, said delegation containing the corresponding stamp duly canceled, which I enter as a minute.

MANUEL ALTAMIRA ALAS, *Secretary*.

Citizen district judge:

I, Jose A. Marquez, a resident of this place, as attorney of Mr. Manuel Elias, as appears from the power of attorney which I have presented to this court under your worthy charge, which I request be returned to me when note has been taken of it, because it is general, before your honor state: That in the exercise of the right given me by article 148 of the law of May 4, 1857, I challenge the personnel of that court without statement of cause, leaving it in its good opinion and report in the process of denouncement of the overplus (demasias) of the ranch of San Pedro, which I have filed in the name of my principal. Therefore, I ask you to be pleased to forward the proceedings to the judge who is to have cognizance of their procedure. It is justice and I protest that I do not proceed in bad faith and what is necessary.

Guaymas, June 11, 1881.

359

Licentiate, JESUS MARIA GAXIOLA.

J. A. MARQUEZ. [RUBRICS.]

Presented Saturday, June 11th. Attest.

Guaymas, June 13, 1881.—Considering that challenges only arise and can be interposed by the litigants in a suit; that the procedure taken by the district court in the process of proceedings formed because of the denouncement of a tract of vacant land does not import any act whatever of contentious jurisdiction and therefore does not constitute a lawsuit, since a lawsuit is the controversy and legiti-

mate decision of a cause before and by a competent judge, or the legitimate discussion of a matter between plaintiff and defendant before a competent judge who directs and determines it by his decision and definitive sentence (Eseriche, word "Juicio") and in the proceedings in question there is no controversy whatever nor does there exist any contention between the parties that must be decided by a definitive sentence. Upon these considerations it is declared that the challenge interposed by the plaintiff is not to be admitted and is rejected. The citizen district judge in Sonora ordered and signed it.

AGUILAR. [RUBRIC.]

Witness:

LEONARDO ESCOBAR.

Witness:

ENRIQUE FONTES. [RUBRIC.]

On the 14th of said month notice of the foregoing order was given to citizen Jose A. Marquez and when cognizant thereof he said: That he hears it and asks the court to be pleased to give him a simple copy of the order of which he is given notice and signed.

AGUILAR.

JOSE A. MARQUEZ. [RUBRICS.]

Witness:

LEONARDO G. ESCOBAR.

Witness:

ENRIQUE FONTES. [RUBRICS.]

Citizen district judge:

I, Jose A. Marquez, as attorney of citizen Manuel Elias, according to the public instrument which I enclose and request be returned to me because it is general, appear before your honor and state: That, in the denouncement of the overplus (demasias) of the ranch of San Pedro, of which my principal is co-owner, the court under your worthy charge was pleased to appoint the practical surveyor, Mr. Alexander J. Clark. This gentleman has not been willing to make the corresponding survey, either of said overplus (demasias) or of the vacant lands asked for by my principal and his wife, Mrs. Eloisa S. de Elias, between said ranch and the town of Terrenate, notwithstanding the repeated requests of Manuel Elias, who has personally made two journeys of two hundred leagues to the place where said Mr. Clark is, who has shown, on frivolous pretexts, that he cannot make the survey. Wherefore, I ask the court to be pleased to relieve said practical surveyor, Mr. Clark, by some other person who may appear to it suitable to the end that the consideration of the suits I have brought may not be obstructed to the serious prejudice of the party I represent. So it is to be done in justice which I protest with whatever else is necessary.

Guaymas, May 18, 1881.

J. A. MARQUEZ. [RUBRIC.]

360 Presented on its date. Attest.

Citizen district judge :

I, Jose A. Marquez, substitute attorney of Don Manuel Elias, as I have shown in the proceedings on the denouncement of the overplus (demasias) of the ranch of San Pedro, jurisdiction of the district of Magdalena, appear before you in the best form of law and state ; That the term fixed by that court for the survey and delimitation being about to expire, as it will on the 13th of the coming October, and it not having been possible to get the surveyor, Mr. Alejandro J. Clark, to make the survey on account of the abundant season of rains on the frontier where the land is situated, I ask you to be pleased to see fit to extend said term, in order that the survey may be made in accordance with the law. It is justice I protest with whatever else is necessary.

Guaymas, September 20, 1880.

J. A. MARQUEZ.

Received on its date. Attest.

Guaymas, September 29, 1880.—In view of the statement of the attorney of the denouncer thirty days more are granted him for him to present the survey of the land denounced in these present proceedings, with the understanding that if he does not present it the denouncement will irremissibly be declared vacated. Citizen Licentiate Jesus Maria Aguilar, district judge in the State, ordered and signed it. I attest.

AGUILAR.

MANUEL ALTAMIRA ALAS. [RUBRIC.]

Thereupon, citizen Jose A. Marquez, attorney of the denouncer being present and when cognizant of the foregoing order, said. He hears it, concurs and signs. I attest.

MANUEL ALTAMIRA ALAS.

J. A. MARQUEZ. [RUBRICS.]

Citizen district judge :

I, Jose A. Marquez, in representation of citizen Manuel Elias which representation I have shown in the denouncement of the overplus (demasias) of the ranch of San Pedro and before your well-known sense of justice, appear and with due respect state : That although notwithstanding the extension which the court under your very worthy charge was pleased to give me for making the survey which was to have been made by the surveyor, Mr. Alejandro J. Clark, for the reasons set out in my petition aggregated to the proceedings of denouncement, I see myself under the necessity of molesting your attention praying you to be pleased to see fit to decree the extension of the term granted, for I have positive information of the illness of said surveyor and that for that reason he has not been able to comply with his obligations. Therefore, I ask you to be pleased to decree as I request, to the end that my principal may

not be considered a tardy denouncer. So it is justice I protest with whatever is necessary.

Guaymas, December 27, 1880.

J. A. MARQUEZ.

361 Guaymas, July 21, 1881.—The term having expired with excess within which the proceedings of survey were to have been presented to the court, as provided in the order of date of July 13, 1880, and taking into consideration that both in said order and in that in which an extension of thirty days was subsequently granted for the presentation of said proceedings, it was made known to the denouncer that if they were not presented within the term fixed, the denouncement would be declared vacated, the court declares that what is asked for in the present application is not acceded to, and, therefore, the denouncement of the overplus (demasias) of the ranch of San Pedro by citizen Manuel Elias is declared to be vacated. The citizen district judge in Sonora decreed and signed it.

AGUILAR.

Witness :

LEONARDO G. ESCOBAR.

Witness :

ENRIQUE FONTES. [RUBRICS.]

On the same date notice of the foregoing order was given to citizen Jose A. Marquez and, when cognizant of it, he said : That he hears it and that with due respect he interposes the recourse of appeal from the order of which he is notified.

AGUILAR.

J. MARQUEZ. [RUBRICS.]

Witness :

LEONARDO G. ESCOBAR.

Witness :

ENRIQUE FONTES. [RUBRICS.]

Guaymas, August 1, 1881.—Having examined the recourse of appeal interposed by citizen Jose A. Marquez, in representation of Mr. Manuel Elias, from the order of this court of the 21st of July last, in virtue of which the denouncement of the overplus (demasias) of the ranch of San Pedro was declared vacated, and considering that the law of July 22, 1863, and the circular of April 20, 1861, based upon which said order was decreed, give no recourse whatever against the declaration in question : that in the denouncement and adjudication of vacant public lands the federal courts in virtue of the jurisdiction given them by article 14 of said law, as they proceed rather as agents of the department of public works than as judicial functionaries properly speaking, since the validity of the proceedings they execute and which were formerly entrusted to administrative functionaries, are subject to the revision of said department, which can confirm them or revoke them after the adjudication has been made by the court, and therefore, in said proceedings, only the provisions of said law should be observed and not judicial

procedure and practice, unless there is opposition by a third party, veritable contention, in which case, it being necessary to bring suit under article 17 of the law, this latter must be substantiated in conformity with the general laws that regulate the determination and procedure of judicial controversies. Finally, the spirit of the existing law on vacant lands being the subdivision of the national lands and their legal adjudication to private individuals in the least possible time in order to bring about, by that means, colonization and development of public wealth, it would be to go against that spirit and to make interminable the adjudication of the vacant lands to admit recourses which nobody till now has interposed against the declaration of vacation of a denouncement. For these considerations the recourse of appeal that has been interposed is declared subject to rejection and it is rejected. The citizen district judge in Sonora ordered and signed it with those in his ordinary attendance.

AGUILAR. [RUBRIC.]

Witness :

LEONARDO G. ESCOBAR.

Witness :

ENRIQUE FONTES. [RUBRICS.]

On the same date notice of the foregoing order was given to citizen Jose A. Marquez, and, when cognizant of it, he said : That he hears it and asks the judge to be pleased to order that a simple copy of the foregoing order be given to him in order to answer in writing what his interest requires.

AGUILAR. [RUBRIC.]

Witness :

LEONARDO G. ESCOBAR.

Witness :

ENRIQUE FONTES.

Citizen district judge :

I, Jose A. Marquez, as attorney of citizen Manuel Elias, as I have shown by the general power of attorney which is in that court and which I ask be returned to me, appear before your honor in due form of law and state: That, as the order of that court of the 21st of last July in which it declared vacated the denouncement of the overplus (demasias) of the ranch of San Pedro, of which my principal is co-owner, causes him irreparable damage, I verbally interposed the recourse of appeal, which was denied me under date of the 1st instant. In virtue thereof, and as such decision prejudices the rights of my principal, I interpose the recourse of denied appeal and ask you, citizen judge, to be pleased to admit it and to order issued the corresponding certificate of the order appealed from in which the appeal was denied, and everything bearing on it with insertion of the present petition as provided in article I of the law of March 18, 1840, and to set for me a term within which I must present my-

self before the superior tribunal. Thus it follows in the rigor of justice which I protest.

Guaymas, August 3, 1881.

J. A. MARQUEZ. [RUBRIC.]
Licentiate JESUS MARIA GAXIOLA. [RUBRIC.]

Presented on its date. Attest.

Guaymas, August 4, 1881.—Issue the certificate of denied appeal asked for with the clauses referred to in the law of March 18, 1840, giving the party in interest the term of thirty days counted from the date the certificate is issued in which to present himself before the circuit court, in person or by attorney. The citizen district judge in Sonora ordered and signed it.

AGUILAR. [RUBRIC.]

Witness:

LEONARDO G. ESCOBAR.

Witness:

ENRIQUE FONTES. [RUBRICS.]

On the same date notice of the foregoing order was given to citizen Jose A. Marquez, and when cognizant of it, he said: That he hears and signs it.

AGUILAR.

J. A. MARQUEZ. [RUBRICS.]

Witness:

LEONARDO G. ESCOBAR.

Witness:

ENRIQUE FONTES. [RUBRICS.]

On this date the certificate ordered was issued. Attest.

363 Guaymas, November 14, 1881.—In conformity with the declaration of the circuit court in its order of the 14th of last October, which on one written leaf and in certified copy is aggregated to these proceedings, the appeal from the order made by this court on July 21st last is admitted, giving the appellant a term of thirty days counted from this date for him to appear to substantiate the recourse before the superior court. Let him be notified and forward the proceedings by the first ordinary mail to the circuit court for the purposes of the law. The citizen district judge in the State so ordered and signed it.

AGUILAR. [RUBRIC.]

Witness:

ENRIQUE FONTES.

Witness:

LEONARDO G. ESCOBAR. [RUBRICS.]

Thereupon notice of the foregoing order was given to citizen Jose Marquez, and, when cognizant thereof, he said: That he hears it and signed it.

AGUILAR. [RUBRIC.]

J. MARQUEZ.

Witness:

ENRIQUE FONTES.

Witness:

LEONARDO G. ESCOBAR. [RUBRICS.]

On the 16th of said month and on ten written leaves these proceedings were forwarded to the circuit court as is ordered. Attest.

Culiacan, October 14, 1881.—Having examined the recourse of denied appeal interposed by citizen Jose A. Marquez, in representation of Don Manuel Elias, against the order of the district judge in Sonora of August 1st last, in which he declared inappealable the order of July 21st in which he declared vacated the denouncement made by Elias of the overplus (demasias) of the ranch of San Pedro; and considering 1st: That although the law of July 20, 1863, on the disposition of the vacant public lands declares to be appealable the different resolutions which the district judge makes in the proceedings on a denouncement and although the order of adjudication is not executed without the approval of the department of public works, nevertheless the judge exercises judicial functions in everything relating to the delimitation, demarcation and survey of the land, acting not in the simple character of an agent of the executive but in the discharge of functions appropriate to his jurisdiction. 2nd.—That, in consequence, his orders in proceedings on denouncement have the same recourses the laws give to matters of contentions or voluntary jurisdiction, according to the case. 3rd.—That the order of the court declaring the denouncement vacated decides in a definitive manner on the rights of the denouncer to the land denounced, and therefore causes him irreparable damage. 4th.—That, in consequence, said order is appealable under laws 13, title 23; part. 3rd and 1st, title 20, Book XI, Nov. Rec. Therefore, this tribunal decides: 1st.—The order of the lower court of August 1st which declared inappealable the order of July 21st last and declared inadmissible the appeal interposed, is revoked. 2nd.—With a copy of the present decision return the proceedings to the lower court. The circuit court so decreed and signed it with the secretary.

LUIS G. PACHECO.

FRANCISCO SALIDO RODRIGUEZ, *Sec'y.*

364 It is a copy of its original which I certify.

Culiacan, October 31, 1881.

FRANCISCO SALIDO RODRIGUEZ. [RUBRIC.]

Culiacan, May 23, 1882.—Having examined the proceedings executed in the district court in Sonora on the denouncement by Don Manuel Elias of the overplus (demasias) there might be in the ranch of San Pedro, situated in the jurisdiction of the town of Santa Cruz, district of Magdalena, in that State, the order of the district judge of July 21, 1881, in which he declared said denouncement vacated because the denouncer had not presented the proceedings of survey in the term the court gave him, the appeal from said order interposed by the attorney of Elias, which being denied was allowed him by order of this tribunal, having examined what was stated in this second instance by the party and the promotor fiscal and considering: 1st.—That, as appears from the proceedings, the denouncement being admitted by the court on July 13, 1880, it appointed Mr. Alexander J. Clark as surveyor, entrusting the proceedings of acceptance

and oath of the surveyor as well as those of survey to the judge of first instance of the district of Magdalena and warning the attorney of the party in interest that if within ninety days counted from that date he did not present the proceedings of survey the denouncement would be considered vacated, which term was extended by the court on September 29 of said year for another thirty days and on May 8, 1881, the attorney of Elias asked that another surveyor be appointed, inasmuch as Clark on different pretexts had not made the survey, which the court refused declaring the denouncement vacated, as has been stated, because the party in interest had not presented the proceedings of survey in the terms fixed. Considering, 2nd. That such vacation can be declared only, in conformity with the law of July 20, 1863, in case the suspension in the proceedings on the denouncement arises from the fault of the denouncer and in the present case this has not been shown. Considering, 3rd.—That in the proceedings the acceptance of the surveyor does not appear nor that orders had been made by the district court relative to the proceedings of survey, either on the part of the surveyor or on that of the authorities charged with executing them. Therefore this court, decides with the following propositions: First.—The order of the lower court of July 21, 1881, which declares vacated the denouncement made by Don Manuel Elias of the overplus (demasias) that might be found in the survey of the ranch of San Pedro is revoked. Second.—The proceedings on the denouncement will continue, the lower court seeing to compliance with the orders made by itself in regard thereto. Third.—With a copy of the present decision return the proceedings to the lower court. The magistrate of the circuit court of Culiacan ordered and signed it with attending witnesses.

LUIS G. PACHECO.

Witness :

PACUAL BULNES.

Witness :

JESUS IRIBE.

It is a copy of its original which I certify, acting with attending witnesses.

Culiacan, May 24, 1882.

LUIS G. PACHECO.

Witness :

P. BULNES.

Witness :

J. IRIBE. [RUBRICS.]

365 Guaymas, June 1, 1882.—In compliance with the decision of the circuit court, in its decree of May 23rd last passed, which on two written leaves and in copy is aggregated to these proceedings, let the proceedings of survey continue. And in attention to the reasons given by the attorney of the denouncer in his petition of May 18th of the year last passed the appointment of surveyor made in Alexander J. Clark by an order of July 13, 1880, is revoked, and Pedro B. Molera is appointed who, after his acceptance and oath,

which he will take before the judge of first instance of Magdalena to whom an order shall be issued with the insertion of this order and of the application of denouncement, shall proceed to the survey of the ranch of San Pedro, after examination of its titles and citation of adjoining owners, marking on the ground as well as on the respective map the lawful area (cabida legal) of said ranch and the overplus (demasias) it may contain within its monuments subjecting his operations to the general laws of July 22 and August 2, 1863, the attorney of the denouncer being warned that the original title of said ranch must accompany the proceedings of survey, to the end that the corresponding note may be taken and that if, within ninety days counted from the notification of the surveyor, said proceedings are not presented, the denouncement shall be declared vacated. The first alternate district judge in the State so ordered and signed it.

P. DEL RINCON. [RUBRIC.]

J. A. MARQUEZ.

Witness:

G. RODRIGUEZ.

On the 2nd instant an order was issued as decreed. Attest.

[RUBRIC.]

On the same date citizen Jose A. Marquez when notified and cognizant of the foregoing order, said: That he hears and signs it.

RINCON.

J. A. MARQUEZ. [RUBRICS.]

Citizen Pablo del Rincon, first alternate district judge in Sonora, officiating:

To you, citizen judge of first instance of the district of Magdalena, I make known to you:

That, in the proceedings of denouncement of the overplus, (demasias) of the ranch of San Pedro, situated in that jurisdiction, this court has made the following order:

Guaymas, June 1, 1882.—In compliance with the decision of the circuit court, in its decree of May 23rd last passed, which on two written leaves and in copy is aggregated to these proceedings, let the proceedings of survey continue. And in attention to the reasons given by the attorney of the denouncer in his petition of May 18th last passed the appointment of surveyor made in Alexander J. Clark, by an order of July 13, 1880, is revoked, and Pedro B. Molera is appointed who, after his acceptance and oath, which he will take before the judge of first instance of Magdalena to whom an order shall be issued with the insertion of this order and of the application of denouncement, shall proceed to the resurvey of the ranch of San Pedro, after examination of its titles and citation of adjoining owners, marking on the ground as well as on the respective map the lawful area (cabida legal) of said ranch and the overplus, (demasias) it may contain within its monuments subjecting his operations to the general laws of July 22 and August 2, 1863, the attorney of the denouncer being warned that the original title of said ranch must accompany the proceedings of survey, to the end

that the corresponding note may be taken, and that if, within ninety days counted from the notification of the surveyor, said proceedings are not presented, the denouncement shall be declared vacated. The first alternate district judge in the State ordered and signed it.

P. DEL RINCON.

Witness:

ENRIQUE FONTES.

Witness:

G. RODRIGUEZ.

The application of denouncement to which reference is made is as follows:

Citizen district judge:

I, Jose A. Marquez, as attorney of citizen Manuel Elias, a resident of Tecoripa, according to the public instrument which I exhibit and request be returned to me because general, before your honor and as may be most conformable to law, state: That, in the name of my principal, Manuel Elias, I make the most formal denouncement of the overplus (demasias) there may be in the ranch of San Pedro, in the jurisdiction of the town of Santa Cruz, in the district of Magdalena, of which ranch my principal is co-owner.

Therefore, I request that, considering me as having appeared with the present application, you be pleased to admit it and to appoint the surveyor to execute the survey and delimitation, to the end that titles for said overplus (demasias) may be delivered to me, on my promise to pay the public treasury, for my said principal, the charges that may be just.

I protest good faith.

Guaymas, July 8, 1880.

JOSE A. MARQUEZ.

And, in order that what I have commanded in the decree herein inserted may have its due compliance, in the name of the justice of the union, I exhort and require you, with recommendation on my part, that, as soon as the present order is received, you order it observed and complied with, delivering it to the surveyor recently appointed, citizen Pedro B. Molera, for the execution of the commission that is conferred upon him.

It is given in Guaymas de Zaragoza, June 2, 1882.

P. DEL RINCON.

Witness:

JOSE RODRIGUEZ.

Witness:

G. RODRIGUEZ.

Magdalena, June 15, 1882.—On this date the surveyor appointed, citizen Pedro B. Molera, having been present there was made known to him, in his own person, the appointment and, when cognizant of it, he said: That he hears it, accepts it and protests that he will faithfully comply with the commission that has been conferred upon

him to the best of his intelligence and understanding and signed it with me the judge, and witnesses.

JOSE C. ESTRELLA.
PEDRO B. MOLERA.

Witness :
MOTRELLA.

Witness :
JOSE R. SERRANO.

367 On this date and on two written leaves these proceedings were delivered to Mr. Molera. Attest.

At the ranch of San Pedro, today, July 19, 1882, the parties in interest having delivered to me the titles of said ranch and given me some information, I believe it necessary, before proceeding to the resurvey, to make a reconnoissance of the land, because the titles are decidedly obscure; and, notwithstanding that the person who made the ancient survey gives the distances, the courses are incomprehensible, with the further circumstance that, as these lands were invaded for a long time by the hostile Apache, they remained completely depopulated, it not being possible to populate them till afterwards, and no description is given of the places said titles cite.

PEDRO B. MOLERA.

Accompanied by the parties in interest we left the house of the ranch in a direction to the south and traveled about half a league to where we found two monuments of piled-up stone on the summit of some low hillock- (lomas) to the east of the river and valley of San Pedro, which river runs from south to north, said monuments being in front of where the valley (bajio) of Las Nutrias debouches. Wherefore, on account of the distance and what the titles say, I believe it must be in this vicinity where they begun the ancient survey, notwithstanding the parties in interest say it seems impossible to them that the ancients would leave land in the valley and that those monuments are marks when they opened the ditch for water. Going to the east for the purpose of finding monuments or something that would fix the land, believing now that the distance varied from the title, I told them it was useless to go further, that, if indeed it were true that all ancient measurements were largely in excess, it ought not for that reason to control when nothing was found to justify it; that I believed, as is inferred from the titles which cite the "slope of the peak," that it was the San Jose mountain which might determine it, because it is the most noticeable point and the only peak in that direction and, at the same time, by the configuration of the ground, the parties in interest stating that not only their ancestors but also they themselves had held possession in good faith and peaceably up to date, confining with the lands of Leoncito, which was also their property, and they had it stocked with stock all the time it was ruined by the Apaches. In all events I believed it advisable not to deviate more than necessary from the distances of the titles, as the parties in interest have the power to make legal objections after-

wards. Wherefore, and according to the titles, taking as a base the distance run along the valley in the ancient survey and what is recognized as belonging to San Pedro down the river, it appears they formed a cross in direction toward the four cardinal points, that is, five leagues from north to south and four from east to west, and this is also shown by the fact that said valley makes a cross with the two mountains, Espinola or Guachuca to the west and San Jose to the east, and restricting it at the same time to true courses the following survey will be begun.

At the ranch of San Pedro, July 21, 1882.

PEDRO B. MOLERA.

368 In the field of operations, today, July 22, 1882, the operations of survey were begun, taking magnetic courses, declination $12^{\circ} 22'$ east, starting from a point in a sort of small valley north 2,500 meters from the valley of Las Nutrias (the others). From this point north 10,109.78 meters; at 1,950 meters a point from which west 2,600 meters is the highest peak of the Cuchilla Atravesada (Transverse ridge), and at 10,109.78 meters a small pass at the southern extremity of the Espinola or Guachuca mountains, where there is a large monument of piled-up stone decidedly old, the region west of this line being vacant land. Thence N. $78^{\circ} 14'$ E., 23,225 meters, along the boundary line between Arizona and Sonora, at 9,705 meters crosses the San Pedro river which runs from south to north; at 10,880 meters the international monument, from which S. 22° W., 1,700 meters, are the houses of the vinateria (distillery) and at 23,225 meters a monument was placed on a large table-land (mesa) north of the San Jose mountains. Thence south 14,725 meters: at 4,894 meters the summit of the San Jose mountains, the last peak on the west slope, and at 14,725 meters a monument was placed in a valley which is formed on the south side by some high hillocks (lomas) and on the north by others that are bluffy, through which valley passes a trail that goes from San Pedro to Leoncito, a permanent water remaining inside to the northwest, the region east of this line being vacant land. Thence west 22,753.36 meters, passing over large table-lands (mesas): at 13,951.68 meters two monuments of piled-up stone placed on the summit of some low hillocks (lomas), on the east side of the valley of San Pedro and, after crossing said valley, at 22,753.36 meters the valley previously mentioned and the points of beginning, the region south of this line being vacant lands. The area is 28,265.11 hectares.

In the field of operations, July 27, 1882.

PEDRO B. MOLERA.

In the field of operations, today, July 28, 1882, the operation of survey for the segregation of the lawful area (cabida legal) was begun, taking magnetic courses, declination $12^{\circ} 23'$ east, starting from the point where there are two monuments of piled-up stone placed on the summit of some low hillocks (lomas) on the east side of the valley of the San Pedro, on the line of the south side of the total area (cabida total) from which N. 4° W., 2,550 meters, are the houses

of the ranch and the frontier custom-house. From this point east 4,201.68 meters, on the line of the south side of the total area (cabida total) until the foot of a chain of low hillocks is reached, the south side of a large valley where a monument was placed. Thence north 8,403.35 meters until a large sage-brush table-land (mesa) is reached, where a monument was placed. Thence west 8,403.36 meters, crossing the river and valley of San Pedro and then low and flat hillocks (lomas) until a flat was reached which is formed by and is on the north side of a dry creek, where a monument was placed. Thence south 8,403.36 meters crossing long, low and flat ridges until the eastern extremity of a sort of table-land (mesa) is reached on the west side of the valley of San Pedro, on the line of the south side of the total area (cabida total), where a monument was placed. Thence east 4,201.68 meters crossing the valley of the river of San Pedro to the before-mentioned two monuments and starting point, the area of which is 7,061.64 hectares, which deducted from the total area of 28,265.11 hectares, gives an overplus (demasias) of 21,203.47 hectares.

As noted, no adjoining owners have appeared because the regions to the south, east and west, are vacant lands and on the north side the boundary line cuts the San Pedro ranch, one part being in Sonora and the other in Arizona, so that private properties are at a considerable distance.

At the ranch of San Pedro, July 31, 1882.

PEDRO B. MOLERA.
MANUEL ELIAS.

I, Plutarco Elias, substitute attorney of Mr. Manuel Elias, as I have shown in the proceedings of denouncement he has made of a tract of vacant land situated between the ranches of San Pedro and Terrenate, jurisdiction of the district of Magdalena, appear before your honor and state: That, inasmuch as the proceedings of survey and map corresponding to the survey of the overplus (demasias) which my principal made in the ranch of San Pedro, of which he is co-owner, several months ago, having been received in that court under your worthy charge, I come to request you to be pleased to order that the proceedings of the denouncement of the overplus (demasias) of the ranch of San Pedro be brought to sight for such action as the case requires. Therefore I ask and pray you to be pleased to accede to my petition because it is justice I protest with whatever is necessary.

Guaymas, May 14, 1883.

P. ELIAS.

Guaymas, May 15, 1883.—Get a report from whom it concerns as to whether the public treasury has been in possession of the overplus (demasias) denounced. The district judge ordered and signed it. I certify.

ESCOBAR.

Witness:

CARLOS ESQUIERRO

On the same date, while present in this court, citizen Plutarco Elias was notified of the foregoing order and, when cognizant of it, he said: That he hears it and signs it. I attest.

ESCOBAR.

P. ELIAS. [RUBRICS.]

Witness:

LEONARDO A. MORENO.

Witness:

JOSE J. RAMIREZ. [RUBRICS.]

On the 17th of said month and year and on nine written leaves these proceedings were referred to the office of the chief of the treasury. Attest.

A seal which says: Office of the chief of the treasury, State of Sonora.

Citizen district judge:

In compliance with the order decreed by that court under date of the 15th instant, I report to you that, as there are no archives in the office under my charge relating to the department of public works, which might afford the necessary data upon the alienation of vacant public lands (baldios), it does not know, for this reason, whether the overplus (demasias) denounced in the present proceedings is or is not in the possession of the public treasury.

370 Guaymas, May 18, 1883.

Auditor in charge of the office, SUAREZ. [RUBRIC.]

Received on its date. Attest.

[RUBRIC.]

Guaymas, May 21, 1883.—As it appears from the foregoing report made by the office of the chief of the treasury in the State, that it does not know whether the public treasury is in possession of the overplus (demasias) of the land denounced and surveyed in favor of citizen Manuel Elias, situated in the district of Magdalena, in compliance with article 17 of the general law of July 22, 1863, publish the denouncement for three consecutive times in the official periodical of the State by means of edicts to the end that those who consider themselves with a right to said overplus (demasias) may present themselves in this court within the term of thirty days counted from the first publication, with the understanding that if they do not do so within the term set they will be adjudicated to their denouncer. The citizen district judge in the State ordered and signed it. I attest.

ESCOBAR.

Witness:

LEONARDO A. MORENO.

Witness:

On the same date, while present in this court, citizen Plutarco Elias, the attorney of the denouncer and notified of the foregoing order, said: That he hears it and signs it.

ESCOBAR.

P. ELIAS. [RUBRICS.]

Witness:

LORENZO A. MORENO.

Witness:

JOSE J. RAMIREZ.

On the 23rd of said month and in compliance with the foregoing order there was ordered published in the official periodical of the State the following:

Edict.

By these presents a summons is issued to and a term set for, those who consider themselves with a right to the overplus (demasias) of the tract called San Pedro situated in the district of Magdalena denounced by Mr. Manuel Elias, to the end that, within the term of thirty days counted from the first publication of the present edict, which, for three consecutive times, will be inserted in the official periodical of the State, they may present themselves in this court, with the understanding that if they do not do so, said overplus (demasias) will be adjudicated to their denouncer, which I enter as a minute. I attest.

ESCOBAR. [RUBRIC.]

Witness:

LEONARDO A. MORENO.

Witness:

JOSE J. RAMIREZ. [RUBRICS.]

October 17, 1883.—The undersigned judge sets forth that he has seen published for the first time, in No. 22 of the official periodical of the State, La Constitucion, corresponding to Friday, May 25th of the current year, the foregoing edict, which periodical is not aggregated to these proceedings because only that copy for the collection comes, which I enter as a minute. I attest.

ESCOBAR. [RUBRIC.]

Witness:

LEONARDO MORENO.

EMILIO PINAS.

With your communication dated the 23rd instant there was received in this office an edict relating to the denouncement of the overplus (demasias) of the land called San Pedro, situated in the district of Magdalena, made by citizen Manuel Elias, which edict has

been sent to the printing office for its publication in the official periodical of the State, *La Constitution*.

Liberty and constitution. Hermosillo, May 25, 1883.

FELIZARDO TORRES.

RAMON CORRAL, *Secretary*.

The district judge in the State, liberty in the constitution, Guaymas.

Citizen district judge:

I, Plutarco Elias, in representation, already accredited, of Mr. Manuel Elias, in the proceedings on the denouncement which the latter, as owner, has made of the overplus (*demasias*) of the ranch of San Pedro in the district of Magdalena, in due form of law and before you respectfully state: That being to the interest of my principal to prove the possession referred to in articles 5th and 6th of the law of July 22, 1863, on the occupation and alienation of public lands, to the end that he may have the benefits the same articles grant, I request you to be pleased to order the following investigation, ordering for the purpose and upon citation of the promotor fiscal that citizens Florencio Dominguez, Jose Maria Montoya, fathers Florencio Ruiz, Juan Pablo Montiel and Jose Maria Michelena, under a formal legal protest and in conformity with the following interrogatory, give their declarations. As the persons I have just mentioned have their domiciles in Santa Cruz, a town in said district, I request you to have the kindness to order that the corresponding order be issued to the local judge of said town for this authority to take the above-mentioned information, recommending him to transmit it to the court under your worthy charge, so that when aggregated, at the proper time, to the proceedings to which I refer, it may produce its legal effect. Therefore, I pray and ask you to be pleased to order in conformity with what I have stated, for such is justice which I protest in what is necessary.

Guaymas, July 10, 1883.

P. ELIAS.

Licentiate, RAMON MARTINEZ.

Interrogatory.

1st. Let the persons who, according to the foregoing petition, are to make their declarations, state their name, age, domicile and other general qualifications of the law. 2nd. Let them declare if it is true, giving the reason for their statement, that my principal, Mr. Manuel Elias, denouncer of the overplus (*demasias*) of the ranch of San Pedro and the other co-owners, Jose Maria Elias, and the heirs of the late Jose Juan Elias, have been and are, for more than twenty years, in quiet and peaceable possession of all of the land that belongs to said ranch, their ancestors being in possession of it from time immemorial.

3rd. Let them state if it is true, giving the reason for their state-

ment, that said land belonging to said ranch, San Pedro, is
 372 cultivated and if there are houses on it occupied by said Jose
 Maria Elias and the servants of said ranch, the custom-house
 of Palominas being established on the same.

4th. Let them declare, giving the reason for their statement if it
 is true that the ranch the foregoing questions refer to belongs to
 them as their property, both to the denouncer, Mr. Elias, and the
 other said co-owners, Mr. Jose Maria Elias, and the heirs of the late
 Jose Juan Elias.

Date *ut supra*.

P. ELIAS.

Licentiate, RAMON MARTINEZ.

Presented on its date. Attest.

Guaymas, July 11, 1883.—Forward the present original petition
 to the citizen judge of first instance of Magdalena, that through him
 the information asked for may be obtained by the local judge of
 Santa Cruz after citation of the promotor fiscal. I, the district judge
 in the State ordered and signed it.

ESCOBAR.

Witness:

LEONARDO A. MORENO.

Witness:

JOSE CASTELAN.

On the same date, citizen Plutarco Elias, when notified of the
 foregoing order and when cognizant thereof, said: That he hears it
 and signs it. I attest.

ESCOBAR.

P. ELIAS. [RUBRICS.]

Witness:

LEONARDO A. MORENO.

Witness:

JOSE CASTELAN. [RUBRICS.]

A seal which says: Court of first instance of San Ignacio.

Received on the 17th instant at nine in the morning. Attest.

Magdalena, July 23, 1883.—Refer for compliance to the local
 judge of Santa Cruz and when the proceedings ordered executed are
 completed transmit the whole of them, in the original, to this court.
 The judge of first instance of the district ordered and signed it.

ANTONIO PADRES.

Witness:

J. A. CHACON.

Witness:

JOSE MARIA DIAZ.

On the same date the order inserted was complied with: Attest.

First Local Court of Santa Cruz.

Was received in this court July 31, 1883, at eight in the morning.
Attest.

Santa Cruz, July 31, 1883.—The citizens to which this order refers being absent, summon them to give their due compliance. I enter it, those in attendance signing with me.

CONCEPCION ELIAS.

Witness:

JUAN DE D. ORTEGA.

Witness:

MACEDONIO GONZALEZ. [RUBRICS.]

373 August 7, 1883.—Citizen Juan Pablo Montiel being present and the customary oath having been administered to him that he might tell the truth, he said that he took the oath and being questioned as to his general qualifications, he said: That his name is as stated, that he is sixty-nine years of age, a widower, a farmer by profession and a resident of this town. 1st.—Asked if he is a relative of the co-owners of the ranch of San Pedro, he said no. 2nd.—Asked if he had any direct or indirect interest in the matter upon which he is making his statement, or intimate friendship, enmity against any of the co-owners of said ranch, he said no. 3rd.—Asked if he knew that Manuel Elias, Jose Maria Elias and the heirs of the late Jose Juan Elias have been and are for more than twenty years in quiet and peaceable possession of all of the land that belongs to the ranch of San Pedro, situated in the district of Magdalena, and if the ancestors, progenitors of said persons, were also in possession of said ranch throughout its whole extent, he said: That for more than twenty years he knows the property of San Pedro to belong first to Don Rafael Elias and Jose Rafael Elias and afterwards he knew as its owners their descendants who are Manuel Elias, Jose Maria Elias and the heirs of the late Jose Juan Elias, and that they were in possession of it all the time up to date, without violence and in peace, without anybody's molesting them except the Apaches, which possession can be called immemorial. 4th.—Asked if he knew who was in possession of the houses of the ranch of San Pedro, he said: That in the truth of its contents, he knows by observation that the ranch of San Pedro is cultivated with farms and occupied with the stock of Mr. Jose Maria Elias and that the dwelling-houses of said gentlemen are there where his servants live and that the frontier custom-house of Palominas is also there. 5th.—If he could assert that the ranch of San Pedro belonged to the Messrs. Elias, he said: That he could assert it, because there is no person who denies that the said Manuel Elias, Jose Maria Elias and the heirs of the late Jose Juan Elias are the owners of the ranch of San Pedro, at the same time that everybody knows that for many years this property belongs to these persons, and that this was all of

his declaration in this particular. I enter it, the deponent signing with me, those in my attendance and the agent of the revenue.

CONCEPCION ELIAS.
JUAN P. MONTIEL.
MIGUEL SIQUEROS.

Witness :

JUAN DE DIOS ORTEGA.

Witness :

MACEDONIO GONZALEZ.

Thereupon and on the same date citizen Jose Maria Michelena was caused to appear and being present he was asked if he would protest to tell the truth in everything he might be asked and being questioned as to his qualifications, he said : That his name is as stated, that he is fifty-eight years of age, married, a farmer by profession and a resident of this town in the full exercise of his rights. Whether he is or not a relative of the co-owners of the ranch of San Pedro and whether he has a direct or indirect interest in the matter upon which he is deposing, and whether he has an intimate friendship or enmity with any of the said co-owners of said ranch, he said : That he has neither of the two things with them. If he knows that the Messrs. Elias, Manuel Elias, Jose Maria Elias and the heirs of the late Jose Juan Elias, have been and are, for more than twenty years, in quiet and peaceable possession of all the land that belongs to the

374 ranch of San Pedro, situated in the district of Magdalena, and if the ancestors or progenitors of said persons were also in possession of said ranch in all its extent, he said : That for more than twenty years he has known as owners of the ranch of San Pedro first Mr. Rafael Elias and Jose Rafael Elias and afterwards their descendants who are Manuel Elias, Jose Maria Elias and the heirs of the late Jose Juan Elias and the first as well as the last have been in possession of said land, for at that place are farms under cultivation, the dwelling-houses of Mr. Jose Maria Elias, others where his servants live and the frontier custom-house of Palominas and they have in this way been in possession of it all the time, without violence and in peace, without anybody's disturbing them except the Apaches, which possession can be called immemorial. Asked if he knows if the Messrs. Manuel Elias, Jose Maria Elias and the heirs of the late Jose Juan Elias are the owners of the ranch of San Pedro, he said : Yes, because he does not know that there is any person whatever who denies that the said Messrs. Elias, Manuel Elias, Jose Maria Elias and the heirs of Jose Juan Elias now deceased are the owners of the ranch of San Pedro, at the same time that everybody recognizes for many years that said property belongs to these persons, this being all of his declaration. I enter it, the deponent signing with me, those in my attendance and the agent of the revenue.

CONCEPCION ELIAS.
MIGUEL SIQUEIROS.
M. MICHELENA.

Witness :

MACEDONIO GONZALEZ.

Witness :

JUAN DE D. ORTEGA. [RUBRICS.]

Santa Cruz, August 10, 1883.—On this date Jesus Dominguez, brother of Florencio Dominguez, was caused to appear in this court, because the latter who should depose is in another place, and being present he was asked if he would protest to tell the truth in so far as he knew and being asked for his qualifications, said: That his name is as stated, that he is forty-two years of age, married, a farmer by profession and a resident of this town in the exercise of his rights. Asked if he was a relative of the co-owners of the ranch of San Pedro and if he had a direct or indirect interest in the matter upon which he is deposing or has intimate friendship or enmity with any of said co-owners of said ranch, he said: That he has neither of said two things with said gentlemen. If he knows that said Mr. Manuel Elias, denouncer of the overplus (demasias) of the ranch of San Pedro and the other co-owners, Jose Maria Elias and the heirs of the late Jose Juan Elias have been and are for more than twenty years, in quiet and peaceable possession of all of the land that belongs to said ranch, their ancestors being in possession of it from time immemorial, he said: That from the time he has had the use of his reason he first knew the ranch of San Pedro as the property of Rafael Elias and of Jose Rafael Elias, and afterwards as that of their descendants, Manuel Elias, Jose Maria Elias and the heirs of the late Jose Juan Elias and that this is more than twenty years, and that they held it in quiet and peaceable possession without anybody's molesting them with exception of the barbarians. Asked if he knows that the ranch of San Pedro is cultivated and that there are houses on it inhabited by Mr. Jose Maria Elias and by the servants of said ranch and that the custom-house of Palominas is established upon it, he said: That it is true that the dwelling-houses of Mr. Jose Maria Elias are upon said ranch and the

375 houses of his servants and that the custom-house of Palominas is also there, and he has some farms now under cultivation and on the balance of the land is the large and small stock of Mr. Jose Maria Elias. Asked if he knows it to be true that the ranch referred to in the foregoing questions belongs to them as their property, both to the denouncer, Mr. Manuel Elias, and the other said co-owners, Mr. Jose Maria Elias and the heirs of the late Jose Juan Elias, he said: Yes, it is true, because there is no person whatever who denies that said Messrs. Manuel Elias, Jose Maria Elias, and the heirs of the late Jose Juan Elias, now deceased, are the owners of the ranch of San Pedro, at the same time that everybody recognizes for many years that said property belongs to these persons, this being all my declaration, which I enter the deponent signing with me, those in my attendance and the agent of the revenue.

CONCEPCION ELIAS.

JESUS DOMINGUEZ.

MACEDONIO GONZALEZ. [RUBRICS.]

Witness:

JUAN DE D. ORTEGA.

Witness:

MIGUEL SIQUEIROS. [RUBRICS.]

Thereupon and on the same date citizen Jose Maria Montoya was caused to appear and when present he was asked if he protested to tell the truth in so far as he knew and being questioned as to his qualifications, said: That his name is as stated, that he is fifty-nine years of age, married, a farmer by profession and a resident of this town. Asked whether he is or not a relative of the co-owners of the ranch of San Pedro, he said: No. Asked if he has a direct or indirect interest in the matter upon which he is deposing, intimate friendship or enmity with any of the co-owners of said ranch, he said: That he has neither of the two things with said gentlemen. Asked if he knows that the co-owners of the ranch of San Pedro, Mr. Manuel Elias, and the other co-owners, Jose Maria Elias and heirs of the late Jose Juan Elias, have been in possession and still are, for more than twenty years, he said: That he has known Mr. Rafael Elias and Jose Rafael Elias on said ranch for more than twenty years, and afterwards he knew their descendants, Messrs. Manuel Elias, Jose Maria Elias, and the heirs of the late Jose Juan Elias and at this date they have been and are in peaceable possession of all the land that belongs to the ranch of San Pedro, situated in the district of Magdalena. Asked if he knew who occupied the houses on the ranch, he said: That on it were those occupied by Mr. Jose Maria Elias, others in which the servants of said gentleman live, the custom-house of Palominas also being there. Asked if there were lands under cultivation on said ranch, he said: That at this date there were some farms under cultivation. Asked if the gentleman referred to had all the time been in possession of said ranch of San Pedro, without violence and in peace without anybody's molesting them, he said: Yes, with exception of the Apaches, who molested everybody. Asked if it is true that the ranch to which the foregoing question relate belonged to them as their property, both to the denouncer, Mr. Manuel Elias, and to the other said co-owners, Mr. Jose Maria Elias and the heirs of the late Jose Juan Elias, he said: Yes, for there is no person whatever who denies that said gentlemen are the owners of the ranch of San Pedro, at the same time that everybody recognizes for many years that said property belongs to these persons, this being all my declaration, all

376 of which I enter the deponent signing with me, those in my attendance and the agent of the revenue.

CONCEPCION ELIAS.

JOSE MARIA MONTOYA.

MACEDONIO GONZALEZ. [RUBRICS.]

Witness:

JUAN DE D. ORTEGA.

Witness:

MIGUEL SIQUEIROS. [RUBRICS.]

Thereupon and on the same date Mr. Florencio Ruiz was caused to appear and when present the customary oath was administered to him, for him to tell the truth, and he said: That he protested and being questioned as to his qualifications, he said: That his name is as stated, that he is of age, married, a farmer by profession

and a resident of this town. 1st.—Asked if he is or not a relative of the co-owners of the ranch of San Pedro, he said: No. 2nd.—Asked if he has a direct or indirect interest in the matter upon which he is deposing, or intimate friendship or enmity with any of the co-owners of said ranch, he said: No. 3rd.—Asked if he knew that Messrs. Manuel Elias, Jose Maria Elias, and the heirs of the late Jose Juan Elias, have been and are in quiet and peaceable possession, for more than twenty years, of all the land that belongs to the ranch of San Pedro, situated in the district of Magdalena, and if the ancestors or progenitors of said persons had also been in possession of said ranch in its whole extent, he said: That for more than twenty years he knows San Pedro as the property first of Rafael Elias and Jose Rafael Elias, and afterwards he knew as its owners their descendents who are Messrs. Manuel Elias, Jose Maria Elias and the heirs of the late Jose Juan Elias and they were in possession of it all the time up to date, without violence and in peace, without anybody's molesting them, with exception of the Apaches, which possession can be called immemorial. Asked if he knew who was in possession of the houses of the ranch of San Pedro, he said: That in the truth of its contents it is known to him by observation that the ranch of San Pedro is cultivated with farms and the stock of Mr. Jose Maria Elias, and that the dwelling-houses of said gentleman are there and other houses in which his servants live, the custom-house of Palominas being at the same time established there. 5th.—Asked if he knows that Mr. Manuel Elias, the denouncer of the overplus (demasias) of the ranch of San Pedro and other co-owners, Jose Maria Elias, and the heirs of the late Jose Juan Elias, are the lawful owners of said ranch, he said: That he knows it, because there is no person whatever who denies that said owners, Messrs. Elias, are the owners of the ranch of San Pedro, and all of them recognize at the same time that said property belongs to these persons for many years, my declaration being concluded with this, which I enter, the deponent signing with me, those in my attendance and the agent of the revenue.

CONCEPCION ELIAS.

F. RUIZ.

MIGUEL SIQUEIROS. [RUBRICS.]

Witness:

JUAN DE D. ORTEGA.

Witness:

MACEDONIO GONZALEZ.

Received the 18th instant at nine in the morning. Attest.

377 Magdalena, August 21, 1883.—The foregoing order being complied with, return it to the court of its origin. The judge of first instance ordered and signed it.

ANTONIO PADRES.

Witness:

J. A. CHACON.

Witness:

JOSE MARIA DIAZ.

On this date and on nine written leaves the order was complied with. Attest.

Guaymas, March 22, 1884.—The authority of Mr. Plutarco Elias, as attorney, to which his petition of the 14th of May of last year refers, not being duly accredited in these proceedings, direct him to present the proper power of attorney, take the corresponding note of it and return it to him. The citizen first alternate district judge in the State ordered and signed it with attending witnesses. I attest.

RINCON.

Witness:

L. A. MORENO.

Witness:

A. PARRILLA.

On the same date, citizen Plutarco Elias when notified of the foregoing order and when cognizant of it, said: That he hears it and exhibits the power of attorney about which he is notified and signed it. I attest.

RINCON.
P. ELIAS.

Witness:

L. A. MORENO.

Witness:

P. PARRILLA. [RUBRICS.]

On the same date I certify to have seen, read and returned to the party in interest a general power of attorney executed at this port on December 13, 1881, by citizen Manuel Elias in favor of citizen Manuel Aguayo, before the notary public, citizen Jesus M. Gaxiola and declared sufficient the same day by citizen Licentiate Ramon Martinez. Said power of attorney has the corresponding stamps duly canceled and contains all the general clauses appropriate to a power of its character and the special ones for interposing the recourses of (ampara) protection, petition for cassation, and its denials, as well as to denounce lands, register mines and to follow all suits through all their stages, with special authority to the attorney to delegate the power in whole or in part, to revoke delegations and to make others again, granting also to the substitutes power to delegate. It is delegated on the 23rd of said month and year in favor of citizen Jose A. Marquez and by the latter to citizen Plutarco Elias, December 1, 1882. Both delegations were signed before the notary public citizen Licentiate Jesus M. Gaxiola, with the same ampleness of authority which said instrument contains, which I enter as a minute. I attest.

RINCON. [RUBRIC.]

Witness:

LEONARDO A. MORENO.

Witness:

PARRILLA. [RUBRICS.]

Guaymas, August 28, 1883.—The information being received aggregate it to the proper proceedings. I, the district judge, ordered and signed it.

ESCOBAR.

Witness:

L. A. MORENO.

Witness:

EMILIO PIÑA.

377½ Citizen district judge:

I, Plutarco Elias, in representation, already accredited, of Mr. Manuel Elias, in the proceedings on the denouncement, which this latter, as co-owner, has presented for the overplus (demasias) of the ranch of San Pedro, situated in the district of San Pedro, in the best form of law and with due respect, state to you: That the information of witnesses which I petitioned that said court for in July of the present year, for the purpose of proving thereby with relation to said denouncement the requisites referred to in articles 5 and 6 of the existing law on the occupation and alienation of vacant, public lands, having been aggregated to said matter, and as the proof to which I refer results from said information and that, therefore, my principal is entitled to the benefits said articles establish, I ask and pray you, taking into consideration for the purpose the accompanying certified copy of the title of the grant of said ranch on ten written leaves, to be pleased to make in my favor the corresponding indicated declaration on the reduction of price which the corresponding tariff fixes for the disposition of the land denounced, for such is justice which I protest in whatever is necessary.

Guaymas, October 15, 1883.

P. ELIAS.

I state further: That your honor is to be pleased to return to me the certified copy which I transmit, after the corresponding note has been taken of it. The same date.

P. ELIAS. [RUBRIC.]

Presented on its date. Attest.

Guaymas, October 15, 1883.—Referred for three days to the representative of the treasury. I, the district judge, ordered and signed it. I attest.

ESCOBAR.

Witness:

L. A. MORENO.

Witness:

EMILIO PIÑA.

On the 16th day of said month notice of the foregoing order was given to citizen Plutarco Elias and when cognizant of it he said: That he hears it and signs it. I attest.

ESCOBAR.

P. ELIAS. [RUBRICS.]

Witness:

L. A. MORENO.

Witness:

EMILIO PIÑA.

On the same date notice of the foregoing order was given to the chief of the treasury officiating as promotor fiscal and when cognizant of it, he said: That he hears it and receives the reference. This he stated and signed. I attest.

ESCOBAR.

AGAPITO SILVA. [RUBRICS.]

Witness:

L. A. MORENO.

Witness:

EMILIO PIÑA.

On the same date and on forty-two written leaves what was commanded in the foregoing order was complied with. Attest.

Citizen district judge:

378 The chief of the treasury officiating as promotor fiscal says that from the data contained in these proceedings it appears that there is reason for the petition made by citizen P. Elias, attorney of the denouncer of the overplus (demasias) of the ranch of San Pedro, situated in the district of Magdalena, citizen Manuel Elias, that he be considered included in the privileges granted to possessors of public lands that are cultivated or enclosed with a ditch or monuments by articles 5 and 6 of the law of July 20, 1863. The reason the undersigned has for thinking as he does are various, but it is sufficient to mention that he has fully proved that citizen Manuel Elias has been in possession of said ranch for more than twenty years. So that in the best judgment of this court I believe that there can be granted to him the privileges which said law concedes to those in like situation as the denouncer.

Guaymas, October 17, 1883.

AGAPITO SILVA.

Received on the same date. Attest.

Guaymas, October 19, 1883.—Forward the present proceedings to the office of the chief of the treasury in the State for him to make according to the tariff in force at the time of the denouncement, the liquidation of the value of the overplus (demasias) of the ranch called San Pedro, denounced by citizen Manuel Elias. The citizen district judge in the State ordered and signed it. I attest.

ESCOBAR. [RUBRIC.]

Witness:

L. A. MORENO.

Witness:

EMILIO PIÑA. [RUBRICS.]

On October 23rd of said year notice of the foregoing order was given to citizen Plutarco Elias and when cognizant of it he said: That he hears it and asks the court to return to him the testimonio

of the title of the ranch as he requested in his communication of the 15th instant.

ESCOBAR. [RUBRIC.]
P. ELIAS. [RUBRIC.]

Witness :

L. A. MORENO.

Witness :

EMILIO PIÑA. [RUBRICS.]

Guaymas, October 23, 1883.—As requested take note of the titles to which the petitioner refers and return them to him. I, the judge, ordered and signed it. I attest.

ESCOBAR. [RUBRIC.]

Witness :

L. A. MORENO.

Witness :

EMILIO PIÑA. [RUBRICS.]

On the 24th of said month and year and cognizant of the foregoing order citizen Plutarco Elias said : That he hears it and signed. I attest.

ESCOBAR. [RUBRIC.]
P. ELIAS. [RUBRIC.]

Witness :

L. A. MORENO.

Witness :

EMILIO PIÑA. [RUBRICS.]

On said date the undersigned district judge in the State declares : That he has before him the testimonio of the title of grant of four sitios of land for raising large stock issued by the citizen treasurer general of the State in the city of Arizpe under date of the 379 8th of May of the year 1833, Jose Maria Mendoza, in favor of citizen Rafael Elias, and after payment of two hundred and eight dollars, ~~one~~ grain, which said Elias paid into the funds of said treasury as the value of the four sitios, expenses and fees of the title. The land is generally known by the name of ranch of San Pedro, in the jurisdiction of the town of Santa Cruz and near the presidio of Fronteras in the district of Magdalena, which I enter as a minute. I attest.

ESCOBAR. [RUBRIC.]

Witness :

L. A. MORENO.

Witness :

EMILIO PIÑA. [RUBRICS.]

Thereupon the testimonio of title was returned to the party in interest in compliance with the foregoing order. Attest.

[RUBRIC.]

On the second of November of said year, these proceedings and the map of the land, on thirty-three written leaves were referred to the office of the chief of the treasury in compliance with the foregoing order. Attest.

[RUBRIC.]

A seal which says: Republic of Mexico, office of the chief of the treasury in Sonora.

Citizen district judge:

As it is not declared by the court under your charge that the denouncer of the overplus (demasias) of the ranch of San Pedro is included in articles 5th and 6th of the law of July 20, 1863, the office under my charge cannot make the liquidation in accordance with your order of October 10th except in view of the declaration to make the reduction provided for in said articles.

Guaymas, March 21, 1884.

AGAPITO SILVA. [RUBRIC.]

Received on the 22nd of said month. Attest.

[RUBRIC.]

Guaymas, April 8, 1884.—As it appears from the minutes in these proceedings that the ranch of San Pedro belongs to various owners who, under the law, have equal right to the overplus (demasias) denounced by citizen Manuel Elias, notify the representative of the latter to state whether he consents that said overplus (demasias) be adjudicated to his principal in union with citizen Jose Maria Elias and the heirs of the late Jose Juan Elias, and in the contrary case summon these latter that they may avail themselves of their right or state whether they waive the right they have in the denouncement and adjudication of said overplus (demasias). The first alternate district judge ordered it signing with those in his attendance. I attest.

P. DEL RINCON. [RUBRIC.]

Witness:

L. A. MORENO.

Witness:

JESUS F. LEYVA. [RUBRICS.]

On the 17th of said April, citizen Plutarco Elias being present in this court, he was notified of the foregoing order and, when cognizant of it, said: That he hears it and consents that the overplus (demasias) denounced by his principal be adjudicated to all their
 380 co-owners who are Don Jose Maria Elias, brother of the denouncer, and the heirs of Don Jose Juan Elias, also brother of said denouncer, who are: Don Plutarco Elias, Don Rafael Elias, Don Alejandro Elias, Don Carlos Elias and Don Manuel Elias and

Doña Jesus Elias and Doña Dolores Elias. This he said and signed.
We attest.

RINCON. [RUBRIC.]
P. ELIAS. [RUBRIC.]

Witness :
L. A. MORENO.

Witness :
JESUS F. LEYVA. [RUBRICS.]

Guaymas, June 17, 1884.—In view of the foregoing reply and inasmuch as it is not shown in these proceedings that the denouncers have the land enclosed in the terms required by article 5 of the law of vacant lands, in order to obtain the privilege the same provides for, but that they have only a title and possession for more than ten years, which they have preserved, return these proceedings again to the office of the chief of the treasury for him to make, under article 6, of said law, the liquidation of the overplus (demasias) in accordance with the tariff in force at the time of the denouncement. The first alternate district judge decreed and signed it before attending witnesses. We attest.

RINCON. [RUBRIC.]

Witness :
L. A. MORENO.

Witness :
J. CASTELAN. [RUBRICS.]

On the 20th of said month notice of the foregoing order was given to citizen Plutarco Elias for himself and as the attorney of the other denouncers and, when cognizant thereof, he said : That he hears it and it being proved in these proceedings not only the circumstance of having a title transfering the dominion but also the possession and cultivation of the land for more than ten years, he believes it is included in the conditions provided for in article 5 of the existing law on vacant public lands, for which reason he prays the court to be pleased to revoke the order of which he is given notice and to order that the liquidation be made with the reduction of the half and he signed. I attest.

RINCON. [RUBRIC.]
P. ELIAS. [RUBRIC.]

Witness :
L. A. MORENO.

Witness :
J. CASTELAN. [RUBRICS.]

Guaymas, June 27, 1884.—As it is within the power of the department of public works, according to the law, to approve or not the liquidation that is made, and in view of the non-concurrence of the party in the decision in the order of the 17th instant, as he requests and in reservation of what said department may decide as to the validity of the information by which it is pretended to obtain the grace and what corresponds to it, let the liquidation be made in

accordance with article 5 of the law of July 22, 1863, forwarding these proceedings for the purpose to the office of the chief of the treasury in the State. The first alternate district judge ordered and signed it before his attending witnesses. I attest.

Witness :

L. A. MORENO.

RINCON. [RUBRIC.]

Witness :

J. CASTELAN. [RUBRICS.]

381 On the 28th of said month notice of the foregoing order was given to citizen Plutarco Elias and, when cognizant of it, he said : That he hears it and signs it. I attest.

RINCON. [RUBRIC.]
P. ELIAS. [RUBRIC.]

Witness :

L. A. MORENO.

Witness :

J. CASTELAN. [RUBRICS.]

On the 4th of July of said year these proceedings on 36 written leaves and the corresponding map were forwarded to the office of the chief of the treasury, as is ordered. Attest.

[RUBRIC.]

Liquidation which This Office of the Chief Makes of the Overplus (Demasias) Denounced and Surveyed in These Proceedings.

Value of 21,203 hectares, 47 ares at the rate of 6 cents per hectare, in accordance with the order of the district judge..... \$1,272.20

Which amount shall be paid in the following manner :

To the federal treasury in cash.....	\$424.07
To the federal treasury in bonds.....	212.03
To the State treasury in cash.....	424.07
To the State treasury in credits.....	212.03

Equal to.....	\$1,272.20	\$1,272.20
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Guaymas, November 18, 1884.

LUIS G. GAGO. [RUBRIC.]

Guaymas, December 31, 1884.—Forward these proceedings to the fiscal representative by way of reference, as is provided by superior authority. The district judge thus decreed, ordered and signed it, acting with attending witnesses. I attest.

J. M. ASTIAZARAN. [RUBRIC.]

Witness :

A. L. DOMINGUEZ.

Witness :

F. SANTILLAN. [RUBRICS.]

On the 19th of January of the year 1885, notice of the foregoing order was given to the attorney of the party in interest and, when cognizant of it, he said: That he hears it and signs it.

ASTIAZARAN. [RUBRIC.]
J. M. MAYTORENA. [RUBRIC.]

Witness:

A. L. DOMINGUEZ.

Witness:

F. SANTILLAN. [RUBRICS.]

On the same date and on thirty-six written leaves these proceedings are forwarded to the chief of the treasury officiating as promotor, as is ordered. Attest.

[RUBRIC.]

Citizen district judge:

The undersigned chief of the treasury, officiating as promotor fiscal, says: Having examined the matter set out in these proceedings it has been observed that the last notification was made to Mr. Jose Maria Maytorena, whose authority does not appear to have been shown, as the last attorney is Mr. Plutarco Elias. In view thereof I return the proceedings to the end that the notification may be made to whom it concerns or for Mr. Maytorena to show that he is the lawful representative. When this is done the proceedings will be returned to me for me to ask whatever is suitable.

382 Guaymas, March 24, 1885.

The chief of the treasury, A. RAMOS. [RUBRIC.]

Guaymas, March 24, 1885.—Make known to citizen chief of the treasury, officiating as promotor, that citizen Jose Maria Maytorena is the lawful representative of citizen Manuel Elias as appears in the proceedings of opposition brought by said citizen Maytorena in representation of Elias, against the survey made by the concessionist, citizen Plutarco Ornelas, in which note was taken of the power of attorney. The district judge thus decreed, ordered and signed it acting with attending witnesses.

J. M. ASTIAZARAN. [RUBRIC.]

Witness:

J. CASTELAN.

Witness:

F. SANTILLAN. [RUBRICS.]

On the same date citizen Jose Maria Maytorena, when notified of the foregoing order, said: That he hears it and signs it.

ASTIAZARAN. [RUBRIC.]
JOSE M. MAYTORENA. [RUBRIC.]

Witness:

J. CASTELAN.

Witness:

F. SANTILLAN. [RUBRICS.]

On the 25th of said month and on 37 written leaves these proceedings are forwarded to the chief of the treasury officiating as promotor fiscal, as is ordered. Attest.

[RUBRIC.]

A seal which says: Office of the chief of the treasury in Sonora.

Citizen district judge:

The chief of the treasury officiating as promotor fiscal says: That he has examined the matter set out in the present proceedings of denouncement, made by citizen Manuel Elias, of the overplus (demasias) of the ranch called San Pedro, situated in the district of Magdalena, and has seen that they have been executed in conformity and accordance with the prescriptions of the law of July 20, 1863; that in virtue thereof and as it appears from said proceedings that the denouncer, Don Manuel Elias, and Don Jose Maria Elias and the heirs of the deceased Don Jose Juan Elias are co-owners of said ranch, who under the law have an equal right, the undersigned is of opinion, save what the department of public works may order with respect to the liquidation made by the office of the chief of the treasury of the value of the land found to be overplus (demasias), that that court should proceed to the adjudication thereof, in the proportion to which each one of said co-owners is entitled.

Guaymas, March 25, 1885.

The chief of the treasury, A. RAMOS. [RUBRIC.]

Guaymas, May 31, 1886.—When the denouncers of the overplus (demasias) of San Pedro show the property they have in said ranch, and when certified that the edict was published three consecutive times in the official periodical of the State, the adjudication of the overplus (demasias) in question will be proceeded with. Let notice be given. The district judge decreed, ordered and signed it. I attest.

Licentiate, MONTEVERDE.

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RAMON MARTINEZ, *Secretary*.

[RUBRIC.]
[RUBRIC.]

On the same date citizen Jose Maria Maytorena being present he was notified of the foregoing order and, when cognizant of it, said: That with respect to the title of property note has been taken of it at leaves 34, front and back, of these proceedings: that with regard to the actual possessors and proprietors of the ranch of San Pedro being Don Manuel, Don Jose Maria and the heirs of Don Jose Juan Elias, they will ask at the proper time that necessary information be taken: that with relation to the edicts the first was published in number 22 of La Constitucion corresponding to May 25, 1883; the second in number 23 of the same periodical published June 1, of the same year and the third in number 24 corresponding to the 8th of the month and year cited: that he will ask the court to certify thereto and that he repeats his request that the overplus (demasias) in question be adjudicated by thirds, one to Don Jose Maria Elias, another to Don Manuel Elias and the third in favor of Plutarco,

Alejandro, Carlos, Rafael, Manuel, Maria de Jesus, and Maria de los Dolores Elias. This he said and signed.

Licentiate, MONTEVERDE.

JOSE M. MAYTORENA.

RAMON MARTINEZ, *Secretary*.

[RUBRIC.]
[RUBRIC.]
[RUBRIC.]

June 1, 1886.—The undersigned judge certifies that he has seen published in numbers 22, 23 and 24 of the periodical "La Constitucion," corresponding to the days the 25th of May, 1st and 8th of June of the year 1883, none of the copies of said periodical being aggregated as only the copy for the collection comes, which was entered as a minute. I attest.

Licentiate, MONTEVERDE.

RAMON MARTINEZ, *Secretary*.

[RUBRIC.]
[RUBRIC.]

Guaymas, June 22, 1886.—Having examined the present proceedings of denouncement of the overplus (demasias) of the ranch of San Pedro made by citizen Manuel Elias, as co-owner of said estate, having examined the writ of the circuit court dated May 23, 1882 and which is found at leaves 11 and 12 back and in which it is decided that the order of this court dated July 21, 1881, which declared this denouncement vacated, be revoked and in virtue of which the proceedings on this denouncement were continued, having examined the proceedings of survey and the map, both made by the surveyor Pedro B. Molera, from which it appears there is a total area of 28,265.11 hectares, of which 7,061.64 hectares are covered by title and 21,203.47 hectares are overplus (demasias); having examined the report of the office of the chief of the treasury and in which it stated that from lack of data it did not know whether the public treasury was in possession or not of the overplus (demasias) that was denounced, for which reason, in accordance with article 17 of the law of July 22, 1863, edicts were ordered published in the official periodical of the State, and the term set having expired with excess and no one appeared, having examined the data found at leaves 34 back and of which note was taken by this court, of a testimonio of title for the grant of four sitios of land for raising large stock, issued

384 by the citizen treasurer general of the State, in the city of Arizpe on the 8th day of the month of May, 1833, in favor of citizen Rafael Elias. The land is known generally as the ranch of San Pedro and is found in the jurisdiction of the town of Santa Cruz and near the presidio of Fronteras; having examined the data which is found at leaf 40 and at 43 and in which appears the information asked for by the attorney of citizen Manuel Elias, for the purpose of proving that said citizen as well as his brother, Jose Maria and Jose Juan Elias, the latter represented at present by his heirs, Plutarco, Rafael, Alejandro, Carlos, Manuel, Maria de Jesus, and Maria de los Dolores, and the heirs of Mr. Jose Rafael Elias now deceased; having examined the other data in these proceedings and in accordance with articles 17 and 18 of the law of July 22, 1863, this court decrees: 1st.—There are adjudicated in possession and without prejudice to a third person who represents a

better right, to citizens Jose Maria, Manuel and the heirs of Jose Juan Elias, in third parts, the 21,203.47 hectares found to be overplus (demasias) in the resurvey of the ranch called San Pedro. 2d.—The present adjudication shall have no effect whatever nor shall the parties in interest be put in possession of the land, except upon the approval of the department of public works, to which, through the government of the State, a testimonio of these proceedings and a copy of the respective map shall be transmitted. 3rd.—Delivery of the titles will not be made to the parties in interest until after they have shown that they have paid its value into the proper office of the treasury as well as that of the stamps, both those of the internal revenue and those for documents and books. The district judge so decreed, ordered and signed it. I attest.

Licentiate, JOSE MONTEVERDE.

RAMON MARTINEZ, *Secretary*.

[RUBRIC.]
[RUBRIC.]

On the same date citizen Jose Maria Maytorena, when notified of the foregoing order said: That he hears it and signs it. I attest.

RAMON MARTINEZ, *Secretary*.

JOSE M. MAYTORENA.

[RUBRIC.]
[RUBRIC.]

On the 8th of November a copy of these proceedings was sent to the department of public works through the conduct of the government of the State. Attest.

MARTINEZ, *Secretary*. [RUBRIC.]

Citizen district judge:

I, Jose Maria Maytorena, attorney of Don Manuel Elias, in the proceedings of denouncement of the overplus (demasias) of the ranch called San Pedro, in the district of Arizpe, before you respectfully and in due form of law proceed to state: That, for the purpose of complying with the last order of which I was given notice, I ask you to be pleased to examine, under lawful oath, the witnesses I will present on the day and hour you may designate, in the tenor of the following interrogatory:

First. State their general qualifications. Second. State if they knew Mr. Jose Rafael Elias now deceased. Third. State if it is true and known to them that there remained no heirs of said Don Jose Rafael Elias other than his sons, Jose Maria, Manuel and Jose Juan Elias? Fourth. State if it is true and known to them
385 that the ranch of San Pedro, situated in the district of Arizpe, and of which Don Jose Rafael Elias was owner and possessor, passed to the possession and property of Don Manuel, Don Jose Maria and Don Jose Juan Elias, the latter represented at the present time by his heirs, Plutarco, Rafael, Alejandro, Carlos, Manuel, Maria de Jesus and Maria de los Dolores Elias. Fifth. Give the reasons for their statements. Being a matter of justice, I ask the court to be pleased to order conformably. I protest whatever is necessary.

Guaymas, June 9, 1886.

JOSE M. MAYTORENA. [RUBRIC.]

Received on the fifteenth of the month of its date, at 10 in the morning. Attest.

MARTINEZ, *Secretary*. [RUBRIC.]

Guaymas, June 15, 1886.—Take the information asked for and when taken aggregate it to the proper proceedings. The district judge decreed and signed it. I attest.

Licentiate, MONTEVERDE.

RAMON MARTINEZ, *Secretary*.

[RUBRIC.]
[RUBRIC.]

On the same date, citizen Jose Maria Maytorena, when notified of the foregoing order, said: That he hears it and signs it. I attest.

RAMON MARTINEZ, *Secretary*.

JOSE M. MAYTORENA.

[RUBRIC.]
[RUBRIC.]

On the 16th of said month the promotor fiscal, when notified of the foregoing order, said: That he hears it and signs it. I attest.

ROBLES.

RAMON MARTINEZ, *Secretary*.

[RUBRIC.]
[RUBRIC.]

On the same date, citizen Librado Irigoyen, a witness presented by citizen Jose Maria Maytorena, being present in this court, and after the oath which he took before the promotor fiscal to tell the truth in so far as he knew and was asked, being asked as to his qualifications, said: That his name is as stated, that he is married, fifty years of age, a native of the town of Arizpe and a resident of this port. Questioned on the second point of the interrogatory which was read to him, he said: That he knew perfectly Mr. Jose Rafael Elias. Questioned as to the third, he said: That it is true and he knows that there remained no heirs of the late Don Jose Rafael Elias other than his sons, Jose Maria, Manuel and Jose Juan Elias, the latter having deceased being represented by his children and heirs, Plutarco, Rafael, Alejandro, Carlos, Manuel, Maria de Jesus and Maria de los Dolores Elias. Questioned as to the fourth, he said: Yes, it is known to him. Questioned as to the fifth point, he said: That what he has heretofore declared is known to him because he was thoroughly acquainted with Jose Rafael Elias and Jose Juan Elias; that what he has said is the truth which he affirms and ratifies signing with the judge, the promotor fiscal and the secretary who attests. I attest.

Licentiate, MONTEVERDE.

LIBRADO IRIGOYEN.

ANTONIO ROBLES.

RAMON MARTINEZ, *Secretary*.

[RUBRIC.]
[RUBRIC.]
[RUBRIC.]
[RUBRIC.]

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On the 17th of said month, citizen Manuel Bustamante, a witness presented by citizen Jose Maria Maytorena, being present in this court, after taking the oath before the promotor fiscal to tell the truth in so far as he knew and was questioned, being asked as to his qualifications, said: That his name is as stated, that he is fifty-five years of age, a widower, a native and resident of this port and by calling an employee. Questioned as to the second point of the interrogatory which was shown him, he said: Yes, he knew him.

Questioned as to the third point, he said: Yes, it is known to him. Questioned as to the fourth, he said: Yes, he knows it and questioned as to the fifth, he said: That it is known to him because he had intimate relations of friendship with Don Jose Rafael Elias and Don Jose Juan Elias and from having heard it, because it was public and notorious. That what he said is true, which he affirmed and ratified signing with the judge, promotor fiscal and secretary who attests.

Licentiate, MONTEVERDE.

M. BUSTAMANTE.

RAMON MARTINEZ, *Secretary*.

[RUBRIC.]
[RUBRIC.]
[RUBRIC.]

On the 18th of said month, citizen Juan Moreno, being present in this court, took the oath before the promotor and the undersigned judge to tell the truth in so far as he knew and was questioned, being questioned as to his qualifications, said: That his name is as stated, that he is fifty years of age, married, a native of the town of Baviacora, by calling a shoemaker and now employed as corporal of the police of this port. Questioned on the second point of the foregoing interrogatory which was read to him, he said: Yes, he knew him. Questioned as to the third, he said: Yes, it is known to him. Questioned as to the fourth, he said: Yes, he knows it. Questioned as to the fifth, he said: That he knows it because he was a countryman of of the Eliases and had been a friend of their mother, Don Rafael as well as Don Jose Juan Elias, whom the deponent knew perfectly well, that he knows nothing more in this respect, that what he has stated is the truth, which he affirms and ratifies, signing, in witness thereof, with the judge, promotor fiscal and secretary who attests.

Licentiate, MONTEVERDE.

JUAN MORENO.

RAMON MARTINEZ, *Secretary*.

[RUBRIC.]
[RUBRIC.]
[RUBRIC.]

Guaymas, June 18, 1886.—It having been shown by the foregoing information that the heirs of Don Jose Rafael Elias are Don Jose Maria, Don Manuel and Don Jose Juan Elias, the latter represented by his heirs, Plutarco, Rafael, Alejandro, Carlos, Manuel, Maria de Jesus and Maria de los Dolores Elias, they therefore have a right to the overplus (demasias) of the ranch of San Pedro denounced by Don Manuel Elias, as co-owner of said estate, keep this circumstance in mind when decreeing the adjudication, for which purpose aggregate this information to the proceedings of denouncement. The district judge so decreed, ordered and signed it. I attest.

Licentiate, MONTEVERDE.

RAMON MARTINEZ, *Secretary*.

[RUBRIC.]
[RUBRIC.]

387 On the same date the attorney of the parties in interest, when notified of the foregoing order, said: That he hears it and signs it. I attest.

JOSE M. MAYTORENA.

RAMON MARTINEZ, *Secretary*.

[RUBRIC.]
[RUBRIC.]

A seal which says: Republic of Mexico, government of the free and sovereign State of Sonora.

There was received in this office with your communication of the 8th of the current month, the testimonio of the proceedings of denouncement of the overplus (demasias) of the ranch of San Pedro, situated in the municipality of the town of Santa Cruz, in the district of Magdalena, made by citizen Manuel Elias, as the owner of said estate, having the honor to say to you in reply that on this date said proceedings were forwarded to the department of public works, for its superior decision.

Liberty and constitution. Hermosillo, November 18, 1886.

LUIS E. TORRES.

RAMON CORRAL, *Secretary*. [RUBRIC.]

To the district judge in the State, Guaymas.

A seal which says: Department of public works, colonization, industry and commerce, Mexico.

On the margin: Section 1st, department of public lands, number 3454. A rubric.

On the 9th of February, 1887, this communication was transcribed to the surveyor, citizen Pedro B. Molera at Magdalena: Having examined in this office the testimonio of the proceedings had in that district court on the denouncement made by citizen Manuel Elias of the overplus (demasias) of the ranch of San Pedro, situated in the jurisdiction of the town of Santa Cruz, in the district of Magdalena, in that State, it has been observed that the surveyor made an error in the calculation of the area, for, verifying this with the very data in the proceedings, it is seen that the total area of the land is 28,253 hectares, 73 ares, 44 centiares and not 28,265 hectares, 11 ares, which said surveyor obtained, for the lawful area (cabida legal) the result is 7,061 hectares, 64 ares, 59 centiares and not merely 7,061 hectares, 64 ares: and, consequently, the overplus obtained is 21,192 hectares, 08 ares, 85 centiares, and not 21,203 hectares, 47 ares, which the surveyor assigned. Besides, it is to be observed that the four sitios for large stock which the titles cover produce, in the conversion to the metric-decimal measurement, 7,022 hectares, 44 ares, and not 7,061 hectares, 64 ares, which the surveyor surveyed, from which it results that he has given to the grantees 39 ares, 20 centiares, more than they are legally entitled to under said title to the prejudice and loss of said extension to the public treasury. In view, then, of these errors, the President of the Republic, to whom a report of the matter was made, has been pleased to direct that it be said to you: That you be pleased to order the surveyor to repeat the survey, marking and delimiting on the ground the lawful extension of 7,022 hectares, 44 ares, which is what the titles cover, correcting, at 388 the same time, his calculation of the area, to the end that what is to be adjudicated as overplus (demasias) may be obtained with due accuracy, and that when this is done, for what is lawfully found to be adjudicable, that court and the office of the

chief of the treasury reform the decree of adjudication and liquidation of the value of the land.

Liberty and constitution. Mexico, December 28, 1886.

By order of the secretary :

M. FERNANDEZ, [RUBRIC.]
Chief Clerk.

To the district judge in the State of Sonora, Guaymas.

In virtue of the communication from that court of date of the 9th of February of the current year, in which it transcribes to me that of the department of public works, communication No. 3454, issued by section 1st under date of December 28th of the year last passed, to the end that there be corrected the error made in the calculation of the area, as well also as that of the conversion from the ancient system to the metric-decimal system, in order to obtain, with due accuracy, what is to be adjudicated as overplus (demasias) on the basis of four sitios covered by the titles ; I have examined the book of field-notes, the drafts of the proceedings and the maps and find that the error in the total area was, perhaps, an error of the pen and in that of the lawful area (cabida legal) the difference arose in the reduction of varas to meters when making up such proceedings, and in compliance with the order of the President of the Republic, as he was pleased to order in the note of remarks, I proceed to describe the land of the ranch of San Pedro, which should be as follows, the errors of the former proceedings being corrected :

Taking magnetic courses, declination $12^{\circ} 23'$ east, starting from a point in the valley north of the valley of Las Nutrias, north 10,109.78 meters till a point is reached where there is a large monument on the boundary line. Thence N. $78^{\circ} 14'$ E., 23,225 meters, till a point is reached on a large table-land fronting the San Jose mountains. Thence south 14,725 meters crossing the San Jose mountains to a valley through which passes a trail that goes from San Pedro to Leoncito. Thence west 22,753.36 meters to the point of beginning, the area of which is 28,253 hectares, 73 ares, 44 centiares.

And the description of the lawful area (cabida legal), being that covered by titles, four sitios for large stock, should be as follows :

Taking magnetic courses, declination $12^{\circ} 23'$ east, starting from a point where there are two monuments on the summit of some low hillocks (lomas) on the east side of the valley of San Pedro, the houses of the ranch of San Pedro and the frontier custom-house being N. 4° W., 2,550 meters ; east 4,190 meters till the foot of some low hillocks (lomas) is reached. Thence north 8,380 meters till a sage-brush table-land is reached. Thence west 8,380 meters till the north side of a dry arroyo is reached. Thence south till the extremity of a table-land is reached, on the west side of the valley of San Pedro. Thence east 4,190 meters till the starting point is reached, the area of which is 7,022 hectares, 44 ares, which, deducted from the total area of 28,253 hectares, 73 ares, 44 centiares, gives an overplus (demasias) of 21,231 hectares, 29 ares, 44 centiares.

389 Therefore, the errors reported to the President of the Republic being corrected, I ask you, Mr. Judge, to be pleased to aggregate the present to the respective proceedings, that they may serve the proper purpose.

Field of operations, at the hacienda of San Pedro, March 19, 1887.
PEDRO B. MOLERA. [RUBRIC.]

On the margin: April 29, 1887. A rubric.

On this date an exemplified copy and map was sent to the department of public works.

[A RUBRIC.]

Guaymas, April 20, 1887.—Surveyor Molera having corrected the errors he committed in the proceedings of the resurvey of San Pedro, forward these proceedings again to the office of the chief of the treasury to make a new liquidation of the value of the land denounced and in which there has resulted an overplus (demasias) of 21,231 hectares, 29 ares, 44 centiares, twenty-one thousand two hundred and thirty-one hectares, twenty-nine ares, forty-four centiares. The district judge decreed and signed it. I attest.

Licentiate, MONTEVERDE.

RAMON MARTINEZ, *Secretary*.

[RUBRIC.]

[RUBRIC.]

On the same date the order was complied with. Attest.

MARTINEZ, *Secretary*. [RUBRIC.]

Corrected Liquidation which This Office Makes of the Value of the Overplus (Demasias) Denounced and Surveyed in the Present Proceedings.

Value of 21,231 hectares, 29 ares, 44 centiares, at 6c. per hectare, in accordance with the order of the district court	\$1,273.88
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The payment will be made in this manner:

To the federal treasury in cash.....	\$424.62	
To the federal treasury in bonds.....	212.32	
To the State treasury in cash.....	424.62	
To the State treasury in certificates.....	212.32	
	<hr/>	<hr/>
	\$1,273.88	\$1,273.88

Guaymas, May 24, 1887.

The chief of the treasury:

CONRADO CHAVERO. [RUBRIC.]

A seal which says: Republic of Mexico, office of the chief of the treasury in Sonora.

Guaymas, May 25, 1887.—Corrected as they are, by Surveyor Molera, the defects that were noted by the department of public works with respect to the proceedings of the resurvey of the ranch

of San Pedro and the proper liquidation of the value of the
 390 land denounced being made by the office of the chief of the
 treasury, this court has seen fit to modify the decree of ad-
 judication of June 22, 1882, in the following terms: 1st.—There are
 adjudicated, in possession and without prejudice to a third person
 to citizens Jose Maria, Manuel and the heirs of Don Jose Juan Elias
 in third parts, the twenty-one thousand two hundred and thirty-one
 hectares, twenty-nine ares, 44 centiares, that were found to be over-
 plus (demasias) in the resurvey of the ranch called San Pedro.
 2nd.—Make an authenticated copy of what has last been done and
 forward it to the department of public works for what it may see fit
 to order. The district judge so decreed and signed it. I attest.

Licentiate, JOSE MONTEVERDE.

RAMON MARTINEZ, *Secretary*.

[RUBRIC.]
 [RUBRIC.]

On the same date the attorney of the party in interest being pres-
 ent and made cognizant of the foregoing order, said: That he hears
 it and signs it. I attest.

JOSE M. MAYTORENA.

RAMON MARTINEZ, *Secretary*.

[RUBRIC.]
 [RUBRIC.]

On the same date the order was complied with. Attest.

MARTINEZ, *Secretary*. [RUBRIC.]

Guaymas, June 7, 1887.—Aggregate to these proceedings the com-
 munication from the department of public works of date of the last
 of the month last passed and give notice of its contents to the at-
 torney of the party in interest. The district judge decreed and
 signed it. I attest.

Licentiate, MONTEVERDE.

RAMON MARTINEZ, *Secretary*.

[RUBRIC.]
 [RUBRIC.]

Guaymas, September 2, 1887.—Return these proceedings to the
 office of the chief of the treasury to correct the liquidation of the
 value of the overplus (demasias) denounced, in accordance with what
 has ultimately been done, by order of the department of public
 works. The district judge decreed and signed it. I attest.

Licentiate, MONTEVERDE.

RAMON MARTINEZ, *Secretary*.

[RUBRIC.]
 [RUBRIC.]

On the same date the order was complied with. Attest.

MARTINEZ, *Secretary*. [RUBRIC.]

A seal which says: Republic of Mexico, office of the chief of the
 treasury in Sonora.

Liquidation which This Office Makes of the Value of the Land Denounced and Surveyed in These Proceedings.

Value of 15,037 hectares, 67 ares, 8 centiares at 6c. per hectare..... \$902.26

The payment shall be made in this manner:

To the federal treasury in cash.....	\$300.75	
To the federal treasury in bonds.....	150.38	
To the State treasury in cash.....	300.75	
To the State treasury in certificates.....	150.38	
	<hr/>	<hr/>
	\$902.26	\$902.26

391 Guaymas, September 5, 1887.

The chief of the treasury:

CONRADO CHAVERO. [RUBRIC.]

Citizen district judge:

I, Jose Maria Maytorena, general substituted attorney of Mr. Manuel Elias, as I have accredited, before you with due respect and in due form of law, appear and state: That being to the interest of the parties I represent that the court which is under your charge issue a certified copy of the decree of adjudication of the overplus (demasias) of the ranch of San Pedro, situated in the district of Arizpe, made in favor of my principal and other co-owners, pursuant to the order of the department of public works in its communication relating to the observations on the proceedings of denouncement of the overplus (demasias) of said ranch, therefore, I ask and pray you to be pleased to order accordingly, because it is justice which I protest with whatever is necessary.

Guaymas, May 24, 1887.

JOSE MARIA MAYTORENA. [RUBRIC.]

Received on its date at three in the afternoon. Attest.

MARTINEZ, *Secretary*. [RUBRIC.]

Guaymas, May 25, 1887.—As is requested issue the certified copy of the antecedents that exist in the proceedings of denouncement of the overplus (demasias) of San Pedro and those that have ultimately been executed in consequence of the note of observations of the department of public works of December 28 of the year last passed. The district judge decreed and signed it.

Licentiate, MONTEVERDE.

RAMON MARTINEZ, *Secretary*. [RUBRIC.]

On the same date notice of the foregoing order was given to the party in interest and when cognizant of it, he said: That he hears it and signed it. I attest.

JOSE M. MAYTORENA. [RUBRIC.]

RAMON MARTINEZ, *Secretary*. [RUBRIC.]

On the same date the copy asked for was issued. Attest.

MARTINEZ, *Secretary*. [RUBRIC.]

Guaymas, September 5, 1887.—Pursuant to the order of the department of public works, in its communication No. 1757, dated June 20, of the present year, the decree of adjudication pronounced by this court on the 23rd of June of the year last passed is amended in the following terms: "1st. There are adjudicated, in possession and without prejudice to a third person, who represents a better right, to citizens Jose Maria, Manuel and the heirs of Jose Juan Elias 15,037 hectares, 67 ares, 08 centiares, fifteen thousand and thirty-seven hectares, sixty-seven ares, eight centiares, as overplus of the ranch of San Pedro, situated in the district of Arizpe, to be divided in three parts for each one of the denouncers. 2nd. Forward an authenticated copy of all that has been newly done and of the respective map to the department of public works. The district judge decreed and signed it. I attest.

Licentiate, JOSE MONTEVERDE.

RAMON MARTINEZ, *Secretary*.

[RUBRIC.]
[RUBRIC.]

392 On the same date the attorney of the parties in interest was notified of the foregoing order and, when cognizant of it, he said: That he hears it and signed it. I attest.

JOSE M. MAYTORENA.

RAMON MARTINEZ, *Secretary*.

[RUBRIC.]
[RUBRIC.]

On this date, December 12, 1890, an authenticated copy of all these proceedings was issued to the parties in interest. Attest.

RUBRIC.

A seal which says: Department of public works, colonization, industry and commerce. Mexico. Section 1st. No. 3755.

Having examined in this department the proceedings had in that district court by reason of the denouncement made by citizen Manuel Elias of the so-called overplus (llamadas demasias) of the ranch of San Pedro, it has been observed that upon making the resurvey of the ranch no monuments were found that would determine the limits or boundaries of said ranch. As stated by the surveyor who made the resurvey he began his operations by starting from a point which he considered convenient, but without being able to assert that that point was the one that served as a starting point to the engineer who made the primitive survey, and there are powerful reasons for believing that each of the engineers started from a different point. Fixing the attention upon the minute of the primitive survey, one comes to the conclusion that the courses indicated in it are so confusing that when attempting to follow them, one goes and returns repeatedly over the same line without its being possible to circumscribe with this data any perimeter whatever. These premises being established, it follows logically: First: That the ranch of San Pedro has no known boundaries nor boundaries that can be determined and consequently that that ranch has no overplus (demasias), for the existence of this implies necessarily the existence of boundaries, so that the land denounced cannot be considered as

overplus (demasias) but properly as vacant public land, (terreno baldio). Second: That the engineer, Pedro B. Molera, made an arbitrary survey, for he started from the point which he selected without other reason than his own free will, measured the surface of the ground that suited his pleasure, and followed the courses he thought convenient, for he ignored the only one indicated with precision in the minutes of the primitive survey. For the reasons stated the President of the Republic, to whom a report of the matter was made, has seen fit to order: First. The adjudication of the land improperly called overplus (demasias) of the ranch of San Pedro which that district court decreed under date of June 22, 1886, in favor of citizen Manuel Elias and associates, is not approved. Second. Notify the office of the chief of the treasury in the State of Sonora to register said land and the public treasury to enter into possession of it, except the part of said land which was sold to Messrs. McManus & Sons and for which the proper title has already been issued.

Liberty and constitution. Mexico, May 3, 1887.

By order of the secretary:

M. FERNANDEZ,

Chief Clerk.

[RUBRIC.]

395 To the district judge of the State of Sonora, Guaymas.

A seal which says: Department of public works, colonization, industry and commerce. Mexico. Section 1st. Department of public lands. No. 1757.

Under this date I state to citizen Jose Maria Elias what follows:

"In view of the proceedings on the denouncement of the overplus (demasias) of the ranch called San Pedro, situated in the jurisdiction of the town of Santa Cruz, in the district of Magdalena, in the State of Sonora, and in view of the fact that, in the operations of survey of that overplus (demasias), there has been included a portion of the lands for which titles have been issued to citizens Francisco Macmanus & Sons, the President of the Republic has been pleased to direct: That, in consideration of the reasons stated by you in the name of your brother, citizen Manuel Elias and associates relative to the possession and other circumstances that favor your denouncement and that as a matter of equity said denouncement should be attended to in the part that does not affect the rights of a third party, the decision of the 31st of May last passed which denied in an absolute manner the pretended adjudication of said public lands (baldios) to said citizen Manuel Elias and associates, is revoked as it is at once revoked, but that this adjudication must be circumscribed to the extension, which, after deducting that which belongs to citizens Macmanus & Sons, is found to be free to be alienated, and that, consequently, with the intervention of the proper district judge, to whom information of this decision has already been given, the segregation of said portion Macmanus be made on the ground and on the map, defining with accuracy the area that is to be adjudicated pursuant to the law of July 22, 1863, designating the

adjoining properties, modifying the judicial decree for the true area, and the office of the chief of the treasury to correct the liquidation also, to the end that, all these proceedings being once concluded, they may be sent by said court to this department that the corresponding title may be issued when they are approved. Which I communicate to you as the result of your proceedings and for the purpose of having your principals, when brought to their knowledge, proceed to the execution of said proceedings in the part that corresponds to them." And I transcribe it to you for your information and to the end that you be pleased to proceed in accordance with the superior decision.

Liberty and constitution. Mexico, June 20, 1887.

By order of the secretary :

M. FERNANDEZ,

Chief Clerk.

[RUBRIC.]

To the district judge in the State of Sonora, Guaymas.

Citizen district judge:

Manuel Elias, for himself and in the name of his brother, Jose Maria, and associates, appears before you to duly state: That under date of June 20 last past we obtained from the department of public works the following decision:

394 A seal which says: Department of public works, colonization, industry and commerce. Mexico. Section 1st. Department of public lands. No. 1756. A rubric.

In view of the proceedings on the denouncement of the overplus (demasias) of the ranch called San Pedro, situated in the jurisdiction of the town of Santa Cruz, in the district of Magdalena, in the State of Sonora, and in view of the fact that, in the operations of survey of that overplus (demasias), there has been included a portion of the lands for which titles have been issued to citizens Francisco Macmanus & Sons, the President of the Republic has been pleased to direct: That, in consideration of the reasons stated by you in the name of your brother, citizen Manuel Elias, and associates relative to the possession and other circumstances that favor your denouncement and that as a matter of equity said denouncement should be attended to in the part that does not affect the rights of a third party, the decision of the 31st of May last passed which denied in an absolute manner the pretended adjudication of said public lands (baldios) to said citizen Manuel Elias and associates, is revoked, as it is at once revoked, but that this adjudication must be circumscribed to the extension, which, after deducting that which belongs to citizens Macmanus & Sons, is found to be free to be alienated, and that, consequently, with the intervention of the proper district judge, to whom information of this decision has already been given, the segregation of said portion Macmanus be made.

properties, modifying the judicial decree for the true area, and the office of the chief of the treasury to correct the liquidation also, to the end that, all these proceedings being once concluded, they may be sent by said court to this department, that the corresponding title may be issued when they are approved. Which I communicate to you as the result of your proceedings and for the purpose of having your principals, when brought to their knowledge, proceed to the execution of said proceedings in the part that corresponds to them.

Liberty and constitution. Mexico, June 20, 1887.

By order of the secretary:

M. FERNANDEZ, [RUBRIC.]
Chief Clerk.

To citizen Jose Maria Elias, present.

In consequence of the foregoing superior resolution and in order to comply with the part that corresponds to us, we would be pleased to have you issue an order to the judge of first instance of the district of Magdalena, that court appointing, if it sees fit, the surveyor Pedro B. Molera, who has a diploma, to the end that, after his acceptance and oath, he execute the operations relating to the correction of the west boundary of the land for which title was issued by the President of the Republic to Messrs. Francisco Macmanus & Sons on the 20th of August, 1886, that this line may form the eastern line of the ranch of San Pedro, and the other operations ordered in said superior resolution, and that it may be so stated in the title that is to be made in our favor, for the overplus (demasias) the government of the country ceded to us, as has been seen, as a result of the
395 denouncement presented on the 8th of July, 1880, the proceedings on which received the approval of the department of public works, in the exercise of the faculty given it by article 18 of the law of July 22, 1863. We ask you, at the same time, that when the proceedings corresponding to this matter are once concluded you be pleased to order that a testimonio of them and of the map then modified be made and sent to the department of public works, with due certification, for proper purposes. I protest that I do not act in bad faith and what is necessary, etc.

Guaymas, July 4, 1887.

MANUEL ELIAS. [RUBRIC.]

Received on the 4th of July of the current year. Attest.

MARTINEZ, *Secretary.* [RUBRIC.]

Guaymas, July 4, 1887.—As requested appoint the surveyor Ignacio Bonillas to proceed, after his acceptance and oath which he shall take before the citizen judge of first instance of the district of Magdalena to whom the present original communication shall be sent, to comply with the order of the department of public works, and for

been issued to Messrs. Macmanus & Sons, who will be present at this operation which will be performed in conformity and in accordance with the prescriptions of the laws of July 22 and August 2, 1863, and when concluded said surveyor shall forward the original of whatever he does to become a part of these proceedings. The district judge in Sonora so ordered and signed it. I attest.

Licentiate, MONTEVERDE.

RAMON MARTINEZ, *Secretary*. [RUBRIC.]

On the same date notice of the foregoing order was given to the party in interest, citizen Manuel Elias and, when cognizant of it, he said: That he hears it and signed it. I attest.

MANUEL ELIAS.

RAMON MARTINEZ, *Secretary*. [RUBRIC.]

On the same date the order was complied with. Attest.

MARTINEZ, *Secretary*. [RUBRIC.]

A seal which says: Court of first instance of Magdalena.

Received on July 9, 1887, with a copy of the map which accompanied it. Attest. At ten in the morning. Attest.

[A RUBRIC.]

Magdalena, July 9, 1887.—Obey and comply. The judge of first instance of the district decreed and signed it.

ADOLFO LOUSTAUNAU. [RUBRIC.]

Witness:

J. MA. DIAZ. [RUBRIC.]

Witness:

JOSE S. LOPEZ. [RUBRIC.]

On the same date an order was issued to look for the surveyor citizen Ignacio Bonillas, and the porter of this court brought the information that he was absent in Nogales. Attest.

[A RUBRIC.]

396 On the 11th of the current month of July, upon which the appearance of the surveyor, citizen Ignacio Bonillas was obtained, he was notified of the foregoing order of the district court in the State, reading the application of citizen Manuel Elias that brought it forth and, when cognizant of it, he said: That he hears it, accepts it, and protests to comply and faithfully discharge the commission that it conferred upon him and he receives said original application and what has been done up to this point together with the copy of the map to which the district court refers in the order made at the foot of the said application and signed.

I. BONILLAS.

LOUSTAUNAU. [RUBRIC.]

Witness:

J. MA. DIAZ. [RUBRIC.]

Witness:

JOSE S. LOPEZ. [RUBRIC.]

On the same date, on three written leaves and the copy of the map referred to, these proceedings were delivered to Mr. Ignacio Bonillas, corresponding note being taken thereof in the proper book. Attest.

[A RUBRIC.]

A seal which says: Ignacio Bonillas, mining engineer and surveyor.

At the ranch of San Pedro, on the 23rd day of the month of July, 1887.—In order to comply with the appointment which the citizen district judge of the State was pleased to confer on me in the order inserted herein, under date of today I have sent a summons to Mr. James Land, who resides at Palominas, three leagues north of this place, and about half a league from the international boundary line, within the Territory of Arizona, and who I am informed is the representative of Messrs. Whitbeck and Robbins, who bought the lands for which titles were issued to citizens Francisco Macmanus & Sons of Chihuahua, to be present, with the maps of those lands, to witness the operations that are going to be executed, under the order of the department of public works herein inserted. It is in witness thereof.

I. BONILLAS. [RUBRIC.]

Witness:

EDUARDO MORENO. [RUBRIC.]

Witness:

M. NAVARRETE. [RUBRIC.]

San Pedro, July 24, 1887.—On this date and in obedience to my summons of yesterday, Mr. James Land has appeared accompanied by Engineer Henry G. Howe. Mr. Land stated that he is the representative of Messrs. Whitbeck and Robbins, adding that, as he was not able to bring the maps and documents of the lands for which titles had been issued to Messrs. Macmanus because he had sent them to Arizpe for the purpose of being recorded in the public register, he had thought proper to bring Mr. Howe, who assisted the engineer, Mr. Bergen, in the survey of said lands to give me all the data I might need to carry out my commission. Mr. Howe showed me in his book of notes of the operations he had taken when making the survey that: Starting from the international monument, situated in the valley of the San Pedro river they measured east along the parallel $31^{\circ} 20'$ of north latitude five thousand six hundred and six (5,606 mts.) meters to a point on a mesa, where they erected the northwest corner monument of the land of Messrs. Macmanus. From this monument following the same parallel they established the northeast corner at nineteen thousand seven hundred meters (19,700 mts.) and from said monument, the northeast corner, they ran a perpendicular line to said parallel of thirty-one thousand eight hundred and seventy meters (31,870 mts.). This being the data necessary for the execution of the

operations that have been entrusted to me, I stated to Mr. Land that I would notify him when I went to the field of operations for him to accompany me in representation of the present owners of said lands for which titles were issued to Messrs. Macmanus. Which I enter in witness thereof.

I. BONILLAS.
J. M. LAND.

Witness :

EDUARDO MORENO. [RUBRIC.]

Witness:

M. NAVARRETE. [RUBRIC.]

On the same date, having noted, on the map that was sent me from the district court, an error on the part of the surveyor who resurveyed this land of San Pedro, for in the observation for the magnetic declination and in the tracing of the boundary line, for, the declination being 12° east as observed with the solar attachment of a Gurley transit, the surveyor, Mr. Pedro B. Molera, puts it at $12^{\circ} 23'$ east and upon tracing the international boundary line, he traces it N. $78^{\circ} 14'$ E., when it is clearly to be seen that he ought to have traced it according to his own observation for the declination, N. $77^{\circ} 37'$ E., committing an error of $0^{\circ} 37'$ which in a line of the length of the one in question would very considerably affect the result of the area, and taking into consideration also the positive order of the department of public works to define with all accuracy, both on the ground and on the map, the portion segregated and the area to be adjudicated, I have thought proper and entirely compatible with my duty and official character, to make a reconnoissance, in due form for the purpose of verifying and reporting with all certainty and accuracy on the points to which I have heretofore alluded. Consequently, accompanied by the necessary assistants and by the parties in interest, Manuel and Carlos Elias, I put myself at the international monument in the valley of San Pedro, for the purpose of verifying, by a series of lines in latitude and longitude, the course and distance from said monument to the south cardinal monument of this ranch of San Pedro, which is situated on some low hillocks (lomas) on the east side of the valley and to the south of the houses of the ranch. Observing the true course S. $14^{\circ} 52'$ E., declination 12° E., there were measured through the level portion of the valley 360.4 meters to a point in said valley. Thence S. $3^{\circ} 02'$ — along the valley 644 meters. Thence S. $16^{\circ} 33'$ W. along the valley 1,358 meters. Thence — $27^{\circ} 53'$ W. along the valley 5,701 meters. Thence — $14^{\circ} 23'$ — along the valley 4,040 meters. Thence — $17^{\circ} 43'$ E. along the valley 2,323 meters, to said south cardinal monument of San Pedro, situated as has been before stated. Having made the calculations of the latitudes and longitudes of the foregoing lines and the trigonometric computation of the hypotenuse of the right-angled triangle, it is found that the south monument of San Pedro is situated

S. $13^{\circ} 28'$ W., 13,839 meters from the international monument mentioned. I note it in due witness thereof.

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I. BONILLAS.

CARLOS ELIAS.

MANUEL ELIAS.

JOSE MA. ELIAS.

[RUBRIC.]

[RUBRIC.]

[RUBRIC.]

Witness :

EDUARDO MORENO. [RUBRIC.]

Witness :

M. NAVARRETE. [RUBRIC.]

Field of operations at San Pedro, July 25, 1887.—For the purpose of verifying if the distances marked on the map on the south line have been measured with exactness, from the south cardinal monument there was observed the true course S. 78° E. and there were measured horizontally thirteen thousand nine hundred and sixty-three and thirty-six-hundredths meters (13,963.36 mts.), at the extremity of which was found the southeast corner monument of this ranch, situated very close to the trail that goes from the houses of the ranch to Leoncito. Having returned to said south monument, the course opposite to the foregoing was observed and there were measured, over the valley and flat table-lands (mesas) eight thousand seven hundred and ninety meters (8,790 mts.) which ended on a low, flat hillock (loma) at the southwest corner of this ranch. Having suspended the operations of the day, I note what was done in witness thereof.

I. BONILLAS.

CARLOS ELIAS.

MANUEL ELIAS.

JOSE MA. ELIAS.

[RUBRIC.]

[RUBRIC.]

[RUBRIC.]

Witness :

EDUARDO MORENO. [RUBRIC.]

Witness :

M. NAVARRETE. [RUBRIC.]

Field of operations at San Pedro, July 26, 1887.—From the southwest corner monument the true course N. 12° E. was observed and there were measured horizontally eleven thousand eight hundred and ninety meters (11,890 mts.) which ended on the international boundary line, on a hill (cerro), at the foot of a precipice and at the point that is marked with a flag where the line passes in the view or sketch No. 29 of the report submitted by the commissioners W. H. Emory and Don Jose Salazar y Larregui, which sketch was taken from the monument in the valley of San Pedro, looking west along parallel $31^{\circ} 20'$ of north latitude. The hill (cerro) referred to is at the southern extremity of the Huachuca mountains. There was found at the point of convergence with the boundary line a pile of stones which is undoubtedly where a flag was placed when running the line. This monument will be the northwest corner of San Pedro. Thence there was observed in the valley of San Pedro the international monument and the compass marked the declination

12° E., and along said parallel 31° 20' there were measured toward the east nine thousand three hundred and forty-nine meters, (9,349 mts.) to said international monument, situated west of the San Pedro river. These operations of the day having terminated, I note what was done in witness thereof.

I. BONILLAS.

CARLOS ELIAS.

MANUEL ELIAS.

JOSE MA. ELIAS.

[RUBRIC.]
[RUBRIC.]
[RUBRIC.]

Witness:

EDUARDO MORENO. [RUBRIC.]

Witness:

M. NAVARRETE. [RUBRIC.]

399 Field of operations at San Pedro, July 27, 1887.—Having given timely notice to Mr. Land to be present today to witness the survey, I have found him at the international monument where the operation ended yesterday and from which observing the course east astronomical there were measured along parallel 31° 20' 680 meters to the San Pedro river and a total of five thousand six hundred and six meters (5,606 mts.) to the northwest corner monument of the lands adjudicated to Messrs. Macmanus. Following along said parallel there were measured from this monument, which will be the northeast of San Pedro, in search of the monument which was formerly the northeast corner eight thousand three hundred and three meters (8,303 mts.), at the end of which it ought to have been found but not finding it a monument was establishing by putting a pine post in a pile of stones on a large table-land (mesa). Thence the true course S. 12° W. was observed and there were measured horizontally 6,390 meters to the summit of the San Jose mountains, to where it begins to slope toward its western extremity. Following the same course the monument which was the southeast corner of San Pedro was reached at a total of sixteen thousand seven hundred and twenty-six meters (16,726 mts.), where the operations of the day were suspended, having measured and noted the perimeter of what was formerly the ranch of San Pedro. Having made the necessary calculations to ascertain the total area, it is found to be 32,555 hectares, 50 ares and 75 centiares and not 28,253 hectares, 73 ares and 44 centiares, as results from the survey of Mr. Molera, thus leaving my doubts confirmed and my correction of the survey justified. This is in witness thereof.

I. BONILLAS.

CARLOS ELIAS.

MANUEL ELIAS.

JOSE MA. ELIAS.

[RUBRIC.]
[RUBRIC.]
[RUBRIC.]

Witness:

EDUARDO MORENO. [RUBRIC.]

Witness:

M. NAVARRETE. [RUBRIC.]

Field of operations at San Pedro, July 28, 1887.—Having ascertained, as shown in the foregoing minutes, the total area of what was the ranch of San Pedro, I am going to proceed to make the segregation of the portion belonging to Messrs. Macmanus or their successors.

Being at the south cardinal monument of San Pedro, the true course S. 78° E. was observed, and taking a sight on the summit of the Trincheras hill (cerro), there were measured nine thousand and twenty-seven meters (9,027 mts.) which ended at the edge of a small valley (bajio) where a monument was put in the form of a pyramid at the convergence of this line with the west line of the lands for which titles were issued to the Messrs. Macmanus. Thence true north was observed, which is the course Mr. Howe indicated to me, and there were measured fifteen thousand three hundred and thirty-five meters (15,335 mts.) which ended at the northwest corner of the Macmanus lands and which is now the northeast corner of San Pedro. Thus is left segregated, as the department of public works orders, the portion belonging to the Messrs. Macmanus or their successors, which is composed of an area of 10,497 hectares, 39 ares, 67 centiares, leaving an area to the ranch of San Pedro of 22,058 hectares, 11 ares, 8 centiares, from which subtracting the legal area (cabida legal) of 7,022 hectares, 44 ares, there remains an excess or overplus (demasias) of 15,035 hectares, 67 ares, 8 centiares. I note what was done in due witness thereof, the parties in interest

400 signing in concurrence.

I. BONILLAS.

CARLOS ELIAS.

MANUEL ELIAS.

JOSE M. ELIAS.

J. M. LAND.

[RUBRIC.]
[RUBRIC.]
[RUBRIC.]

Witness:

EDUARDO MORENO. [RUBRIC.]

Witness:

M. NAVARRETE. [RUBRIC.]

Magdalena, August 15, 1887.—At this place there is aggregated, in duplicate, to these proceedings the map of San Pedro, on which are shown the operations executed in complying with the commission which the citizen district judge was pleased to confer upon me. I note it in witness thereof.

I. BONILLAS.

A seal which says: Department of public works, colonization, industry and commerce. Mexico.

On the margin: Department of public lands. No. 469.

On this date the following is stated by this department to the chief of the treasury in that State.

The President of the Republic has been pleased to approve the adjudication decreed by the district court in that State in favor of citizens Manuel Elias and associates for the overplus (demasias) of

the ranch of their property called San Pedro, situated in the district of Magdalena in that State. Consequently, the respective title of property has been issued for them, which document is forwarded to you to the end that, in conformity with the last dispositions of date of February 18, 1886, you proceed to collect the part corresponding to that State, that is to say, \$451.07 cents, for, citizens Elias and associates having paid an equal corresponding amount to the federation through their representative, citizen Jose A. Puebla, into the general treasury, as per advice of the department of the treasury dated the 21st instant, the parties in interest owe only the part above mentioned being careful to notify this department when said payment is made, stating to you that the stamps affixed to said title have been furnished by the grantees, and that according to the proper liquidation, this office when making it committed the error of stating the true area as 15,037 hectares, 67 ares, 08 centiares, when it should be 15,036 hectares, 67 ares, 8 centiares, producing a value of \$902.14 cents instead of that obtained by that office of \$902.26 cents. And I transcribe it to you for your information and to the end that, under article 19 of the law of July 22, 1863, that court may be pleased to order possession of the land given to the parties in interest, directing you to modify the decree of adjudication stating that the true area is 15,035 hectares, 67 ares, 08 centiares.

Liberty and constitution. Mexico, February 24, 1888.

By order of the secretary :

M. FERNANDEZ, [RUBRIC.]
Chief Clerk.

To the district judge in the State of Sonora, Guaymas.

401 A seal which reads: Republic of Mexico, office of the chief of the treasury in Sonora. No. 774.

I have the honor to forward to you a certificate of payment which vouches for the payment of the value of the overplus (demasias) of the ranch called San Pedro, situated in the district of Magdalena, adjudicated to citizens Manuel Elias and associates, stating to you at the same time that the value of the stamps attached to the title that was issued to them has also been satisfied by the parties in interest.

Liberty and constitution. Guaymas, October 18, 1888.

The chief of the treasury :

J. SUAREZ, M. [RUBRIC.]

To the district judge, present.

Year of 1888 and 1889.

A seal which says: Republic of Mexico, office of the chief of the treasury in Sonora. Certificate No. 122.

The chief of the treasury and the auditor—

Certify: That at leaf 58 back in the general book of funds of this office, corresponding to the present fiscal year, there is an entry of the following tenor: On the margin: 1888. October 18. To account of receipts No. 23. Proceeds from the sale of vacant public lands (terrenos baldios) which citizens Manuel Elias and associates

have paid into this office through their attorney, the amount of the part corresponding to the state of the value of the overplus (demasias) of the ranch of their property called San Pedro, situated in the district of Magdalena. The federal part has been paid in the general treasury of the federation according to advice from it herewith. Certificate No. 125..... \$451.07

And in witness thereof the present certificate is issued in Guaymas, October 18, 1888.

The chief of the treasury:

J. SUAREZ, M. [RUBRIC.]

The auditor:

M. MARTINEZ. [RUBRIC.]

A seal which says: Republic of Mexico, office of the chief of the treasury in Sonora. No. 775.

I have the honor to forward to you the title of property for the overplus (demasias) of the ranch called San Pedro, situated in the district of Magdalena, issued in favor of citizens Manuel Elias and associates, to the end that, in accordance with the provisions of article 19 of the law of July 22, 1863, you may be pleased to deliver it to the parties in interest and to order possession given them, in virtue of having paid the value of said overplus (demasias) and that of the stamps attached to the title, as per notice I give to that court today in my other communication of this same date. I request that you be pleased to acknowledge receipt of the present letter.

Liberty and constitution. Guaymas, October 18, 1888.

The chief of the treasury:

J. SUAREZ, M. [RUBRIC.]

402 To the district judge, present.

I have received from the district court, as the attorney of citizens Manuel and Jose Maria Elias and of the heirs of Don Jose Juan Elias, Plutarco, Rafael, Carlos, Manuel, and the undersigned and Jesus and Dolores, also Elias, the title of property of the overplus (demasias) of the ranch called San Pedro, situated in the district of Magdalena in this State, the area of which is 15,035 hectares, 67 ares, 8 centiares, which was issued by the citizen President of the Republic, General Porfirio Diaz, in the capital at Mexico, on the 24th of February of the current year, the value of said overplus (demasias) being nine hundred and two dollars and twenty-six cents.

Guaymas, October 15, 1888.

ALEJANDRO ELIAS. [RUBRIC.]

Is a faithful and exact copy of the original proceedings that exist in the archives of this district court, and which is issued in compliance with the order in the decree of February 22 of the current year, made in the proceedings had in the petition for said copies by the citizen attorney of the United States of America for the land court,

which I certify as secretary of the district court in the State of Sonora on the 22nd day of the month of March, 1899.

GUILLERMO P. COTA. [RUBRIC.]

(Form No. 88.)

Form for Authentication of Signature.

CONSULAR AGENCY OF THE UNITED STATES,

March 23rd, 1899.

I, Frank M. Crocker, consular agent of the United States at Guaymas, Mexico, do hereby certify that the signature of Guillermo P. Cota, secretary to F. R. Nieto, federal judge of the State of Sonora, at the foot of the paper hereto annexed, is his true and genuine signature, and that the said Guillermo P. Cota is personally known to me.

In witness whereof I have hereunto set my hand and affixed the seal of the consular agency at Guaymas, Mexico, this day and year next above written, and of the Independence of the United States the 124th.

(Signed)

[SEAL.]

FRANK M. CROCKER,

U. S. Consular Agent.

(Endorsed:) Filed in the office of the clerk, court of private land claims, June 1, 1899. Jas. H. Reeder, clerk, by R. L. Long, deputy.

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DEFENDANT'S EXHIBIT No. 5-1.

Al margen las estampillas correspondientes debidamente canceladas.

C. Juez de Distrito:

Plutarco Elias por si y en representacion de la Señora su madre y hermanos en el juicio de oposicion sobre denuncia de las demasias de los terrenos llamados "Agua Prieta," Lo del Gato, Lo de Tomas Romero, de Baltazar, &c., hecho por el Señor Camou hijo, ante Ud. respetuosamente expongo: que en once del actual se me notifico un auto del juzgado de su digno cargo en que me manda correr traslado de estas actuaciones para formalizar mi oposicion al denuncia del Señor Camou y que en cumplimiento de tal disposicion paso a hacer la formalizacion correspondiente.

Segun la escritura presentada por la parte del Señor Camou, aparece que el veinticinco de Julio de mil ochocientos sesentidos, los Señores Jose Juan, Jose Maria y Manuel Elias, con anuencia de la madre de estos, Doña Guadalupe Perez, vendieron con pacto de retroventa á los Señores Camou Hermanos treinta y dos sitios de tierra para cria de ganado mayor y Caballar, sitios en San Pedro, contenidos en los Ranchos de Santa Barbara, Agua Prieta, Naidenibáachi, Agua del Gato, Baltazar y San Rafael del Valle, en jurisdicción de Sta. Cruz, Fronteras, y una parte dentro de la linea americana en la suma de doce mil pesos y por el término de tres años.

Como se ve, el Señor mi padre, Jose Juan, fue uno de los vende-

dores, pero en el tiempo que corrian los tres años para la retroventa, tuvo que emigrar de Ures, pues que siendo Prefecto, dejó aquella Ciudad, en vista de la aproximacion de las fuerzas invasores. Murió antes de que se cumpliera el contrato, y cumplido este, los Señores Camou siguieron en la posesion de los terrenos, sin que antes nos hubiese oído, ni á la Señora, mi Madre, ni tampoco á nosotros, sus hijos, de los que unos éramos menores y otros lo son todavia. He hecho mencion de lo anterior porque precisamente en la actualidad se ocupa nuestro apoderado en procurar la invalidacion de la escritura de venta, pues fuerza mayor impidió se salvaran los terrenos por la exhibicion del precio recibido de los Señores Camou Hermanos. En el termino probatorio comprobaré que los terrenos en cuestion estan sub judice y que por lo mismo no procede el denuncia de las demasias que solo puede hacer en la parte que permite la ley el propietario legal. Por otra parte tenemos que denunciar las demasias una persona como el Señor Camou, hijo, que por si no tiene las caractéres que marca la ley para poderlo hacer. La escritura de sociedad que presenta el denunciante demuestra que es propietario de treinta y dos sitios de terreno, unicos que le fueron vendidos; pero el caso es que ya posee una considerable cantidad de terreno, y como la ley, al fijar un limite para la extension de terreno denunciable, ha querido evitar la reunion en pocas manos de la propiedad territorial, claro es que no debe ser admitido su denuncia, siendo de observar que así lo manda terminantemente la suprema disposicion de 30 de Abril de 1861, en su parte final. Llegaria positivamente al absurdo que se considerase que el Señor Camou, hijo, pudiera denunciar las demasias, á que se refiere, pues siendo la mente de la ley la subdivision de la propiedad, nos encontrariamos que, poseyendo ya cincuenta mil cuatrocientas ochenta y cuatro hectaras, obtenia ademas otras setenta mil seiscientas siete, formando una propiedad de mas de veintiocho sitios, siendo así que la ley solo quiere que en una sola mano se reunan dos mil quinientas hectaras y no mas.

404 He manifestado que la escritura en virtud de la que se poseen los terrenos va á ser invalidada ó al menos que así se procura y que el Señor Camou no puede denunciar—las demasias porque así se contraria el espíritu de la ley de baldios. Pues bien, esto no pasaria con nosotros pues, ademas de ser muchos hermanos, ya se ha formado una asociacion para el completo del denuncia. Podria decirseme que el Señor Camou, hijo, como poseedor, tiene derecho á denunciar las demasias de los terrenos en cuestion. Niego la cualidad de poseedor legal al Señor Camou, hijo, y me fundo en la propia escritura de Sociedad que tiene presentada. Se sabe que la posesion se gana lo menos en un año y un dia, y él posee los terrenos para si desde el veinte de Abril del presente año; con la circunstancia que aun hasta tal posesion es perfectamente viciosa, puesto que no consta la traslacion de dominio de los terrenos de Camou Hermanos á Camou, hijo, por escritura publica, debidamente registrada y con las demas formalidades legales. Por todo lo expuesto, concluyo reduciendo mi oposicion á los siguientes puntos:

Derecho.—Único. Los terrenos denunciados por el Señor Camou

hijo, estan sub judice, por estar comprendidos en la escritura que le sirve de titulo, la cual se procura invalidar conforme á derecho.

De derecho.—Primero. La persona que es propietaria de una considerable extension de terreno, no puede denunciar mas que dos mil quinientas hectaras de demasias.

Segundo. Siendo el espíritu de la ley de baldios que no se reuna en una sola mano una gran extension de propiedad raiz el denuncia de una persona de mas de veintiocho sitios no se debe admitir.

Tercero. El que se dice propietario de una finca debe probar su propiedad por medio de titulo revestido de las formalidades legales.

Cuarto. No se presume poseedor el que no ha adquirido la posesion en el termino de la ley.

Quinto. Solo el propietario y poseedor legales y reconocidos pueden hacer el denuncia de demasias.

En el curso del presente juicio haré el desarrollo de los puntos que dejo manifestados, entretanto.

A Vd., C. Juez, suplico me tenga como formalmente opuesto á la adjudicacion de las demasias denunciadas por el Señor Camou, h., lo cual es de justicia que protesto con lo necesario.

Guaymas, Noviembre quince de mil ochocientos ochenta.

P. ELIAS,

Lic., A. JAUREGUI.

Al margen las estampillas correspondientes debidamente canceladas.

C. Juez de Distrito:

Juan P. M. Camou, como representante acreditado del Señor Jose Camou, h., en autos con el Señor Plutarco Elias, por si y hermanos sobre oposicion al denuncia hecho por mi poderdante de demasias de los terrenos denominados Agua Prieta, Lo del Gato, Lo de Tomas Romero & su estado supuesto, ante Vd. en la via y forma mas precedente en derecho, digo: que su notoria justificacion se ha de servir declarar en un todo improcedente la demanda de los opositores y en estado condenarlos en costas, daños y perjuicios, por la muy notoria temeridad con que proceden. Asi es justicia por los fundamentos, que, aunque de una manera muy sucinta, paso á exponer. Es un hecho incontrovertible que los Señores Jose Juan, Jose Maria y Manuel Elias, y la Señora madre de estos, Doña Guadalupe Perez de Elias, vendieron, con el pacto de retro, á los Señores Camou Hermanos, treinta y dos sitios de tierra para cria de ganado mayor y caballar situados en San Pedro, jurisdiccion de Santa Cruz, Fronteras, y contenidos en las estancias de Sta. Barbara, Agua Prieta, Naidenibacachi, Agua del Gato, Baltazar, Las Mesas y San Rafael del Valle, siendo precio de la venta la cantidad de doce mil pesos recibidos á satisfaccion de los vendedores. Es un hecho asi mismo incontrovertible que en la venta se estipuló: que la parte vendedora y sus herederos tenian el termino de tres años para redimir los terrenos mencionados, prebia devolucion á la compradora del precio recibido con sus intereses correspondientes, á la razon de uno por ciento mensual, los derechos de alcabala y escritura satisfechos por esta por la parte compradora. Tambien es un hecho

fuera de toda duda que los Señores Camou Hermanos recibieron los títulos de las posesiones vendidas. Lo anteriormente expuesto consta por la escritura publica otorgada en la Ciudad de Ures á veinticinco de Julio de mil ochocientos sesenta y dos y que obra ya en autos del folio veintiuno al veintiocho.

Ahora bien, no habiendo los vendedores ni sus herederos, redimido los terrenos vendidos en el termino acordado, tres años, los Señores Camou Hermanos adquirieron, ipso facto, un derecho de dominio irrevocable en la cosa vendida. Asi lo determina nuestra legislacion comun. Ni obsta en contrario la alegacion que hoy vienen haciendo los opositores, aseverando que el Señor Don Jose Juan Elias emigró de la ciudad de Ures á consecuencia de la aproximacion de fuerzas invasores y que por lo mismo y en virtud de fuerza mayor, no corrió el termino para la redencion, asegurandose que salió de la precitada Ciudad de Ures y murió sin que expirase el termino de tres años convenido para la redencion. He dicho que no obsta tal alegacion porque una y otra especies son absolutamente falsas. El Señor Don Jose Juan Elias salió de la ciudad de Ures, Capital del Estado en la epoca á que me refiero, el dia treinta y uno de Julio de mil ochocientos sesenta y cinco: el termino prefinido en la venta con el pacto de retro expiró el veinticinco del mismo mes y año: el cinco de Noviembre fué herido en el arroyo de la Cananea, falleciendo á los tres dias en el Pueblo de Bacoachi: y ambos desgraciados acontecimientos tuvieron lugar en el año antes citado de mil ochocientos sesenta y cinco. A mayor abundamiento debo dejar consignado en mi respuesta: que el Señor Juan P. Camou, socio principal de la extinguida sociedad "Camou Hermanos," promovió en el año de mil ochocientos sesenta y nueve, una informacion ante el juzgado que es hoy á su muy digno cargo, pidiendo en ella, entre otras cosas, que los Señores Jose Maria y Manuel Elias y la Señora Guadalupe Perez de Elias, madre de estos, y Bernardina Lucero de Elias, esposa que fué del finado Don Jose Juan Elias y madre del Señor Plutarco Elias, hoy demandantes, ratificaron la venta de los terrenos supradichos: y tal acto tuvo lugar con intervencion de la Promotoria fiscal de ese Juzgado, segun consta por las actuaciones originales que deben obrar en la oficina. Mas no es esta la ocasion oportuna para descender á reflexiones serias y en derecho procedente sobre los anteriores puntos: y esto en virtud de no ser la justicia federal la llamada á resolver sobre la validez ó nulidad de la escritura de venta, tantas veces mencionada. Si algo me he distraido en este respecto ha sido por seguir paso á paso, como lo haré, los muy temerarios razonamientos de la parte opositora: y porque entiendo ser de mi deber, no pasar desapercibidos especies, que no tienen razon de ser, debiendo contradecir tambien, como formalmente contradigo, la aseveracion bien temeraria de estar los terrenos cuestionados sub judice, como lo protesta demostrar

406 la parte contraria en el termino probatorio. Se dice: que mi representado carece de las condiciones que marca la ley sobre ocupacion y enagenacion de terrenos baldios, para denunciar las demasias comprendidas en los títulos y escritura de venta. Como fundamento se alega: que siendo poseedor ya de una considerable

cantidad de terreno, está incapaz para adquirir mayor extension: pues de esta manera se barrenaria la disposicion de treinta de Abril de mil ochocientos sesenta y uno que trató de evitar la reunion en pocas manos de grandes extensiones territoriales. Por toda respuesta á la objeccion anterior, debo decir: que la disposicion citada ha sido derogada por la ley posterior de veinte y dos de Julio de mil ochocientos sesenta y tres, vigente en la materia. Que esto sea cierto esto es, que exista tal derogacion, se comprueba con el parecer muy respectable del Señor Licenciado Jose Diaz Leal, Jefe de la Seccion de Baldios en la Secretaria de Fomento, en su obra intitulada Legislacion y Guia de Terrenos Baldios, pagina doce. El Señor Camou, hijo, no es un extraño que viene denunciando baldios y por lo mismo no esta comprendido en la taxativa establecida en el articulo segundo de la ley de la materia. Es el poseedor de demasias de los ranchos antes referidos y en tal virtud está hábil para adquirirlas, sea cual fuese su extension; asi está determinado por la ley. La temeridad de los demandantes va lejos: Niegan al Señor Camou, hijo, la cualidad de poseedor legal de los terrenos vendidos con el pacto de retro y á los que he hecho referencia en el cuerpo del presente escrito. Dos son los apoyos ó fundamentos de tal negativo: 1º.—Que mi poderdante no lo ha poseido un año y un dia; y 2º.—Que la traslacion de dominio de Camou Hermanos á Jose Camou, hijo, no consta por escritura publica debidamente registrada y con las demas formalidades legales.

Apenas, C. Juez, merecen los honores de la discusion semejantes objecciones, y creo contestarlas muy satisfactoriamente con solo llamar la atencion sobre el contenido en lo conducente de la escritura de venta de los terrenos y de la disolucion de la Sociedad Camou Hermanos, que corren agregadas á los presentes autos. En efecto, es una verdad innegable que el Señor Jose Camou, hijo, figuró como socio de la extinguida compañía Camou Hermanos, hasta el veinte de Abril del corriente año: es tambien una verdad innegable que Camou Hermanos poseyeron por mas de un año y un dia los terrenos que hoy se cuestionan. Si pues mi representado adquirió en propiedad los tantas veces referidos terrenos en virtud de la asignacion que se le hizo por su representacion que como socio tenia en la compañía, Como negarle hoy su carácter legal de poseedor y propietario? Al hacerse la disolucion de la compañía, surgió la duda sobre si se causaba ó no el impuesto decretado por el Estado con las asignaciones hechas á los socios que de ella se separaban. Tal duda fué elevada en consulta al C. Gobernador y este alto funcionario, con la justificacion que le es característica, dió una resolucion en sentido negativo, como puede leerse al final de la copia de la escritura que tengo presentado. Alli mismo se verá que de ella se tomó razon. Ademas si los Señores Camou Hermanos no poseyeron por mas de un año y un dia las mencionadas demasias, si tal posesion no la tiene mi poderdante, quienes son sus poseedores? Acaso los adversarios? Por mas que he estudiado el escrito de demanda no encuentro aducida una sola razon legal en tal sentido.

Parece que la contra parte entiende que los Señores Elias solo vendieron treinta y dos sitios de tierra y no sus demasias y por lo

407 mismo se creen con algun derecho sobre ellas. Mas tal creencia es verdaderamente erronea. Si en la precitada escritura de venta, se hizo solo mencion de treinta y dos sitios, fué porque estos aparecian amparados por los titulos de que hicieron entrega y que en debida forma acompaño, constantes de cuarenta y cuatro fojas útiles. Para la debida ilustracion del juzgado debo hacer constar que los titulos adjuntos se refieren unicamente á los terrenos nombrados Naidenibacachi, Agua Prieta y Sta. Barbara, que se componen de diez y ocho sitios doce y media caballerias, y á los de Agua de Baltazar, Lo del Gato, Lo de Tomas Romero y la de las-Mesteñas, de diez y un tercio y tres y un quinto caballería, no figurando por ahora los de San Rafael del Valle, por no haber sobre ellos cuestion alguna, y si sobre las demasias de aquellos.

Por otra parte no consta por la escritura de venta que los vendedores se hubieran reservado derecho alguno sobre las precitadas demasias: ni podia existir tal reserva, supuesto que en la epoca de su otorgamiento estas pertenecian á la federacion; y no fué sino hasta el veintidos de Julio de mil ochocientos sesenta y tres, cuando el Presidente de la Republica, competentemente autorizado, concedió á los poseedores, y por gracia, la facultad de denunciarlas, en la extension que tuviesen mediante cierta remuneracion. Ademas, Cual es la accion instaurada por la partecontraria en el presente juicio de oposicion? No se designa, ni se colije del contexto de su escrito; pero aun cuando esto no fuese así, entiendo que en el presente caso, no puede haber efecto suspensivo en la secuela del juicio de denuncia de mi representado. Por las consideraciones expuestas.

A Ud. pido se sirva dar por contestado la presente demanda, y en estado fallar en el sentido que solicité al principio del presente escrito.

Protesto no proceder. Guaymas, Noviembre siete de mil ochocientos ochenta.

J. P. M. CAMOU.
Lic. JESUS M. GAXIOLA.

Guaymas, Junio seis de mil ochocientos ochenta y siete. Visto el presente juicio de oposicion promovido por el Ciudadano Plutarco Elias, por si y como apoderado de sus hermanos mayores, Rafael y Alejandro Elias, y de su Señora Madre, Doña Bernardina Lucero de Elias, quien tiene la patria potestad de sus hijos menores, Maria de Jesus, Maria Dolores, Carlos y Manuel Elias, contra el denuncia de las demasias de los terrenos nombrados Agua Prieta, Santa Barbara, Naidenibacachi, Agua de Baltazar, Lo del Gato, Lo de Tomas Romero, Lo de las Mesteñas, situados en el Distrito de Arizpe, hecho por su propietario, Jose Camou. Visto lo expuesto por el actor en su escrito de denuncia y contestacion del demandado, lo pedido por el Promotor Fiscal, las pruebas rendidas por las partes; los ultimos alegatos, los varios incidentes que han surgido en este juicio adversos á los solicitantes, la citacion para definitiva y todo lo demas que de autos consta y ver convino.

Resultando: Que en veinticinco de Junio de mil ochocientos sesenta y dos, los ciudadanos Jose Juan, Jose Maria y Manuel Elias

y su Señora Madre, Doña Guadalupe Perez de Elias, otorgaron en la Ciudad de Ures y ante el Juez de Primera Instancia de aquel Distrito, Ygnacio Lopez, una escritura de retroventa de los ranchos ya mencionados y que miden todos ellos treinta y dos sitios de tierra para eria de ganado mayor y caballada, á favor de los Señores

408 Camou Hermanos por la cantidad de doce mil pesos, y con plazo de tres años contados desde esa fecha.

Resultando: Que los Señores Camou Hermanos pidieron ante ese mismo Juzgado en diez y siete de Marzo de mil ochocientos sesenta y nueve, la ratificacion de la retroventa, que se hace referencia, habiendola verificado el ciudadano Jose Maria Elias, por si y en representacion de su madre, Doña Guadalupe Perez, y su hermano, Manuel Elias, como tambien la Señora Bernardina Lucero, ya viuda por haber muerto su esposo, Don Jose Juan, el ocho de Noviembre de mil ochocientos sesenta y cinco, fecha en que ya era vencido el termino de la retroventa.

Resultando: Que habiendose disuelto la compañía, conocida en este Estado bajo la razon social de Camou Hermanos el veinte de Abril de 1880, en una de sus clausulas, la cuarta, expresa que el socio gerente, Ciudadano Jose Camou, hijo, por su representacion en dicha compañía, se adjudicaba, entre otras cosas, los terrenos de que ya se ha hecho mencion y cuyas demasias es el objeto de este juicio.

Resultando: Que el C. Jose Camou, hijo, como propietario de esos terrenos denunció sus demasias ante este Juzgado de Distrito el veintidos de Abril de mil ochocientos ochenta, y admitido el treinta y uno de Mayo del mismo año, habiendose opuesto á ese denuncia el C. Plutarco Elias el treinta de Junio del mismo año y en Octubre trece se le previno que justificara la personeria como representante de sus menores hermanos, á que se refiere su escrito de oposicion, y presentado que fué el poder general otorgado por la Señora Bernardina Lucero por si y á nombre de sus menores hijos, Jesus, Dolores, Carlos y Manuel Elias, Rafael y Alejandro Elias, mayores de edad, á su favor en Octubre veinte se mandó que formalizase su oposicion dentro del termino de tres dias y hasta el quince de Noviembre del mismo año fué cuando presentó su escrito formalizando dicha oposicion: siguiendo el juicio su curso regular, lo que fué interrumpido por las varias excepciones dilatorias y recursos improcedentes interpuestos por el actor, lo que ha dado lugar a que no se haya podido concluir este juicio en cerca de siete años que tuvo principio con perjuicio en grave manera á los intereses del fisco.

Considerando: Que al vender los herederos de Don Rafael Elias esas propiedades, con el pacto de retrovendiendo, cuya venta se ha consumado por no haber sido redimida en tiempo oportuno lo han hecho sin reserva alguna con todos los derechos que tenian sobre esos mismos terrenos, traspasandolos á los Señores Camou Hermanos y que hoy pertenecen al ciudadano Jose Camou, h.

Considerando: Que conforme á la ley vigente de baldios de veinte de Julio de mil ochocientos sesenta y tres, articulos 5º y 8º, indudablemente el propietario de un terreno tiene el derecho y aun preferencia á las demasias que pudiera tener esa propiedad denun-

ciada en tiempo oportuno y sin que otra persona lo haya hecho anteriormente.

Considerando: Que los opositores segun los antecedentes y constancias que existen en este juzgado de Distrito tienen ya denunciadas treinta y tres mil, ochocientas cincuenta y ocho hectaras, ochenta y siete aras, ochenta y una centiara, 33,858 hectaras, 87 aras, 81 centiaras, de terreno en este Estado de la manera siguiente: ya tituladas diez mil hectaras, 10,000 hectaras, en un terreno contiguo á los Señores Cirilo Rochin y Urbano Borquez, en el propio Distrito: 6,000 hectaras, seis mil hectaras en un terreno nombrado El Leoncito, en el mismo Distrito, cuyos titulos aun no han satisfecho, siete mil setenta y siete hectaras, nueve aras, ochenta y una centiaras, 7,077 hectaras, 09 aras, 81 centiaras, como tercera parte adjudicada de

21,213 hectaras 29 aras, 44 centiaras, veintium mil doscientas 409 trece hectaras, veintinueve aras, cuarenta y cuatro centiaras en las demasias de San Pedro, tambien del mismo Distrito, y 10,781 hectaras, 78 aras, diez mil, setecientas ochenta y una hectaras setenta y siete centiaras, como tercera parte de treinta y dos mil, trescientas cuarenta y cinco hectaras, treinta y cuatro aras, 32,345 hectaras, 34 aras, como demasias denunciadas en San Jose de la Cienega de Heredia, Distrito de Magdalena, y en consecuencia les corresponde á cada uno mas de dos mil quinientas hectaras que por la ley de baldios de 20 de Julio de 1863, articulo 2°, les es permitido obtener.

Considerando: Que conforme y segun las varias disposiciones de la secretaria de Fomento y entre ellas la que ultimamente se ha recibido de fecha veintiseis de Febrero del presente año y que á la letra dice: "Dada cuenta al Presidente de la Republica con el oficio de Ud. fecha 17 del actual, en el que consulta si los denunciantes de demasias de cualquiera extension que exceda de dos mil quinientas hectaras, estan en aptitud de denunciar y adquirir otro baldio de la misma extension, conforme al derecho que la ley concede para ello á todo habitante de la Republica, el mismo Supremo Magistrado ha tenido á bien acordar se diga á Ud. que el articulo 5° de la ley de 22 de Julio de 1863, da derecho á los poseedores de un baldio de cualquiera extension que sea para que se les adjudique en cuyo caso se comprenden las llamadas demasias en los predios de particulares; Pero que como esas demasias no son otro cosa sino terrenos sometidos para su adquisicion á las mismas prescripciones de la citada ley, se deduce que el que haya obtenido titulo de las repetidas demasias por una extension de dos mil quinientas hectaras ó mas, no tiene accion á denunciar otro baldio, sino solo cuando la superficie adquirida sea menor de dos mil quinientas hectaras, pues entonces podra solicitar hasta el completo de la expresada extension, con fundamento del articulo 2° de la mencionada ley. Libertad y Constitucion. Mexico, Febrero 26 de 1867 [1887]. P. O. D. S. M. Fernandez, O. M. Al Juez de Distrito del Estado de Sonora, Guaymas." Todos y cada uno de los opositores y herederos del Señor Don Jose Juan Elias ya no tienen accion á denunciar terrenos en la Republica, supuesto que en las demasias que lo han hecho han excedido de las dos mil quinientas hectaras que como maximum fija la ley.

Considerando: Que los terrenos que se cuestionan en este juicio solo deben considerarse como demasias para su propietario y como tal los ha denunciado y para los extraños como los opositores es de tenerse como baldios y bajo este caracter ya estos no tienen derecho para admitirlos como denunciantes, supuesto que ya han obtenido una superficie mayor que la que designa por la ley y por lo mismo esten incapaces de obtener mas terreno baldio en la Republica.

Teniendo en consideracion por ultimo las razones y fundamentos legales en que se apoya el demandado en su escrito de alegato de buena prueba, este Juzgado en vista de todo lo ya expuesto definitivamente juzgando resuelve:

1°.—No hay lugar á lo solicitado por los opositores á que se les prefiera en el denuncia de las demasias de los ranchos llamados Agua Prieta, Santa Barbara, Naidenibacachi, Agua de Baltazar, Lo del Gato, Lo de Tomas Romero y Lo de las Mesteñas, situadas en el Distrito de Arizpe, hecho por su propietario Ciudadano Jose Camou, hijo, en consecuencia se proseguirá este denuncia por todos sus tramites hasta que se obtenga el titulo respectivo.

2°.—Se condena á los promoventes opositores á las costas de este juicio.

3°.—Notifiquese. El Juez de Distrito asi lo decretó y firmó por ante mí. Doy fe.

Lic., JOSE MONTEVERDE.

RAMON MARTINEZ, *Secretario*.

Es copia fiel y exacta de las constancias que obran en el expediente original que obra en el archivo de este Juzgado de Distrito. Va confrontado y cancelados los timbres respectivos y que se expide en cumplimiento de lo mandado por auto de veintidos de Febrero del corriente año, dictado en el expediente promovido en solicitud de dichas copias, por el Procurador de los Estados Unidos de America para la corte de terrenos. Lo que certifico como Secretario interino del Juzgado de Distrito en el Estado de Sonora, á ocho de Mayo de mil ochocientos noventinueve.

GUILLERMO P. COTA. [RUBRICA.]

(Form No. 88.)

Form for Authentication of Signature.

CONSULAR AGENCY OF THE UNITED STATES,

May 9th, 1899.

I, Frank M. Crocker, consular agent of the United States at Guaymas, Mex., do hereby certify that the signature of Guillermo P. Cota, secretary to F. R. Nieto, federal judge for the State of Sonora, at the foot of the paper hereto annexed, is his true and genuine signature, and that the said Guillermo P. Cota is personally known to me.

In witness whereof I have hereunto set my hand and affixed the seal of the consular agency at Guaymas, Mex., this day and year next

above written, and of the Independence of the United States the 123rd.

[SEAL.]

(Signed)

FRANK M. CROCKER,

Consular Agent.

C. 10. Filed in the office of the clerk, court of private land claims, June 1, 1899.

JAS. H. REEDER, *Clerk,*

By R. L. LONG, *Deputy.*

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DEFENDANT'S EXHIBIT 6.

On the margin the corresponding stamps duly canceled.

Citizen district judge :

Plutarco Elias, for himself and in representation of his mother and brothers, in the adverse suit on the denouncement of the overplus (demasias) of the lands called "Agua Prieta, Lo del Gato, Lo de Tomas Romero, de Baltazar, etc.," made by Mr. Camou, Son, respectfully state- to you :

That on the 11th inst. I was notified of an order of the court under your worthy charge in which it was ordered that these proceedings be referred to me for me to formulate my opposition to the denouncement of Mr. Camou, and in compliance with said order I proceed to make the corresponding formulation.

According to the deed presented on the part of Mr. Camou, it appears that on the 25th of July, 1862, Messrs. Jose Juan, Jose Maria and Manuel Elias, with the consent of their mother, Mrs. Guadalupe Perez, sold to the Messrs. Camou Brothers, with a stipulation of retrovendition, thirty-two sitios of land for raising large stock and horses located at San Pedro, contained in the ranches of Santa Barbara, Agua Prieta, Naidenibacachi, Agua del Gato, Baltazar and San Rafael del Valle, in the jurisdiction of Santa Cruz, Fronteras, and a part within the American line for the sum of twelve thousand dollars, and for the term of three years.

As is seen, my father, Jose Juan, was one of the vendors, but during the time the three years for the retrovendition was running he had to emigrate from Ures, for, being prefect, he left that city in view of the approach of the invading forces. He died before the contract expired and after it had expired the Messrs. Camou continued in possession of the lands, without our first being heard, either our mother or ourselves, her sons, some of whom were minors and others still are. I have made mention of the foregoing, because our attorney is now occupied in trying to obtain the invalidation of the deed of sale, for unexpected obstacles prevented the lands from being saved by the offer of the price received from the Messrs. Camou Brothers. At the time of making proof I shall prove that the lands in question are *sub judice* and that therefore the denouncement of the overplus (demasias) is not admissible, which the lawful owner can make only to the extent the law allows. On the other hand we have a person like Mr. Camou, Son, denouncing overplus

(demasias), who in himself does not possess the qualifications prescribed by the law to enable him to do so. The partnership agreement presented by the denouncer shows that he is the owner of thirty-two sitios of land, the only ones that were sold to him, but the case is that he already owns a considerable amount of land, but as the law, when it fixed a limit to the extent of land denounceable, has intended to avoid the aggregation of landed property in a few hands, it is clear that his denouncement should not be admitted, it being observed that the supreme disposition of April 30, 1861, expressly so orders in its final part. It would positively become an absurdity to consider that Mr. Camou, Son, could denounce the overplus referred to, for, the intent of the law being the subdivision of property, we would find that, although he already owned
 412 50,484 hectares, he would obtain besides other 70,606, forming a property of more than 28 sitios, the law being that only 2,500 hectares should be aggregated into a single hand, and no more.

I have stated that the deed in virtue of which the lands are held is going to be invalidated or at least an effort will be so made and that Mr. Camou cannot denounce the overplus (demasias) because such would be contrary to the spirit of the law on vacant lands. This, however, is not the case with us, for, besides being many brothers, a partnership has already been formed for the perfection of the denouncement. It might be said to me that Mr. Camou, Son, has the right to denounce the overplus (demasias) of the lands in question, as the possessor thereof. I deny the qualification of lawful possessor in Mr. Camou, Son, and I stand upon the partnership agreement he has presented. It is known that possession is acquired at least in a year and a day, and he is in possession of the lands for himself since the 20th of April of the present year, with the circumstance that even such possession is perfectly vicious, as there is no evidence of the transfer of dominion of the lands from Camou Brothers to Camou, Son, by a public document, duly registered and with other legal formalities. In view of all of what has been stated, I conclude reducing my opposition to the following points:

Equity.—Only point. The lands denounced by Mr. Camou, Son, are *sub judice* because they are included in the deed which serves him as a title, which an effort will be made to invalidate under the law.

Law.—First.—The person who is the owner of a considerable extent of land cannot denounce more than two thousand five hundred hectares of overplus (demasias). Second.—It being the spirit of the law on vacant lands that a large extent of real property cannot be aggregated in a single hand, the denouncement by one person of more than 28 sitios ought not to be admitted. Third.—He who calls himself the owner of an estate should prove his property by means of a title clothed with legal formalities. Fourth.—He is not presumed to be a possessor who has not acquired possession in the terms of the law. Fifth.—Only the lawful and recognized owner and possessor can make denouncement of the overplus (demasias).

In the course of the present suit I shall develop the points I have stated, meanwhile I pray you, citizen judge, to consider me as formally opposed to the adjudication of the overplus (demasias) denounced by Mr. Camou, Son, which is justice which I protest with whatever is necessary.

Guaymas, November 15, 1880.

P. ELIAS.

Licentiate, A. JAUREGUI.

On the margin the corresponding stamps duly canceled.

Citizen district judge :

I, Juan P. M. Camou, as the accredited representative of Mr. Jose Camou, Son, in the suit with Mr. Plutarco Elias for himself and brothers on the opposition to the denouncement made by my principal of the overplus (demasias) of the lands called Agua Prieta, Lo del Gato, Lo de Tomas Romero, etc., their condition being understood, before you, in the way and manner most conformable to law, state :

That, with your well-known sense of justice, you must declare wholly inadmissible the suit of the adverse claimants and at the proper time condemn them to costs, damages and losses, for the
413 very notorious rashness with which they proceed. Such is justice for the reasons which, although in a very succinct manner, I proceed to state :

It is an incontrovertible fact that Messrs. Jose Juan, Jose Maria and Manuel Elias, and their mother, Mrs. Guadalupe Perez de Elias, sold, with a stipulation of retrovendition, to Messrs. Camou Brothers thirty-two sitios of land for raising large stock and horses, situated at San Pedro, jurisdiction of Santa Cruz, Fronteras, and contained in the ranches of Santa Barbara, Agua Prieta, Naidenibacachi, Agua del Gato, Las Mesteñas and San Rafael del Valle, the price of the sale being twelve thousand dollars, received to the satisfaction of the vendors. It is a fact likewise incontrovertible that it was stipulated in the sale : That the party selling and his heirs had the term of three years to redeem said lands, upon return to the purchaser of the amount received with its corresponding interest, at the rate of one per cent. per month, the excise and document taxes being paid by the party purchasing. It is also a fact placed beyond all doubt that the Messrs. Camou Brothers received the titles of the possessions sold. The foregoing statement is set out in the public document executed in the city of Ures, on the 25th of July, 1862, and already appears in these proceedings, folio 21 to 28.

Now then, neither the vendors nor their heirs having redeemed the land sold within the term agreed upon, three years, the Messrs. Camou Brothers acquired, *ipso facto*, an irrevocable right of dominion in the thing sold. Thus our ordinary legislation determines it. Nor does the allegation the adverse claimants are making today operate to the contrary, in the assertion that Mr. Jose Juan Elias emigrated from the city of Ures in consequence of the approach of invading forces and that therefore and in virtue of unexpected ob-

stacles the term for redemption did not run, asserting that he left the aforesaid city of Ures and died without the term of three years agreed upon for the redemption having expired. I have said that such allegation is without effect, because both statements are absolutely false. Mr. Jose Juan Elias left the city of Ures, capital of the State, in the epoch to which I refer, on the 31st day of July, 1865; the term fixed in the sale, with the stipulation of retrovencion, expired on the 25th of said month and year; the 5th of November he was wounded on the Cananea creek, died on the third day in the town of Bacuachi and both unfortunate occurrences took place in the year before mentioned of 1865. Further, I must state in my reply: That Mr. Juan P. Camou, principal partner of the extinguished partnership, Camou Brothers, in the year 1869, brought about an investigation in the court which is today under your very worthy charge, asking therein, among other things, that the Messrs. Jose Maria and Manuel Elias and Mrs. Guadalupe Perez de Elias, their mother, and Bernardina Lucero de Elias, who was the wife of the late Jose Juan Elias and mother of Mr. Plutarco Elias, now the plaintiffs, ratify the sale of the above-mentioned lands, and this act took place with the intervention of the promotor fiscal of that court, as shown by the original proceedings which should be in the office. But this is not the proper occasion to descend to serious reflections proper in law on the foregoing points and this in virtue of the fact that it is not federal justice that is called upon to decide as to the validity or invalidity of a deed of sale, so many times mentioned.

If I have somewhat diverged in this respect, it has been in order to follow, step by step, as I shall do, the very rash reasoning of the adverse party, and because I understand it to be my duty not to allow pass unnoticed statements that have no reason for existing, it being my duty to contradict also, as I formally contradict, the very rash assertion that the lands in question are *sub judice*, as the adverse party declares he will show at the time of making proof. It is said: That my principal lacks the conditions the law prescribes on the occupation and alienation of vacant lands, in order to denounce the overplus (*demasias*) included in the titles and deed of sale. As a reason it is alleged: That being already the possessor of a considerable amount of land, he is incapacitated from acquiring a greater extension, because, in this manner, the disposition of the 30th of April, 1861, which endeavored to prevent the aggregation of large areas of land in few hands, would be nullified. For full reply to the foregoing objection I must say: That the disposition referred to has been repealed by the subsequent law of July 22, 1863, in force in the matter. That this is true, that is, that there is such repeal is shown by the very respectable opinion of Licentiate Jose Diaz Leal, chief of the section of vacant lands in the department of public works, in his book entitled *Legislation and Guide on Public Lands*, page 12. Mr. Camou, Son, is not an outsider who comes to denounce vacant lands and therefore not included in the limitation established in the second article of the law in the matter. He is the possessor of the overplus (*demasias*) of the ranches before referred to and in virtue thereof is qualified to acquire them, what-

ever be their extension. It is so determined by the law. The rashness of the plaintiffs goes very far; they deny to Mr. Camou, Son, the qualification of lawful possessor of the lands sold, with the stipulation of retrovencion, and to which I have referred in the body of this document. The supports or bases of such negative are two: 1st, that my principal has not possessed it a year and a day, and 2nd, that the transfer of dominion from Camou Brothers to Jose Camou, Son, does not appear in a public document duly recorded and with the other legal formalities. Such objections scarcely merit the honors of discussion, citizen judge, and I believe them very satisfactorily answered by solely calling attention to the contents of the deed of sale in what relates thereto and of the dissolution of the partnership, Camou Brothers, which are aggregated to the present proceedings. In fact, it is an undeniable truth that Mr. Jose Camou, Son, figured as a member of the extinguished company, Camou Brothers, until the 20th of April of the current year. It is also an undeniable truth that Camou Brothers possessed, for more than a year and a day, the land- which are today questioned. If then my principal acquired as property the so-many-times-mentioned lands in virtue of the assignment that was made to him because of his representation which he had in the company as a member, how can he be denied today his lawful character as possessor and owner? When the dissolution of the company was made, the doubt arose as to whether or not there was liability for the tax decreed by the State on the assignments made to the members who retired from it. Such doubt was taken by way of consultation to the citizen governor and this high functionary, with the justification that is characteristic of him, gave a decision in a negative sense, as can be read at the end of the copy of the deed which I have presented. It will be seen there also that note of it was taken. Besides, if the Messrs. Camou Brothers did not possess said overplus (demasias) for more than a year and a day, if my principal does not hold such possession, who are the possessors thereof? Possibly the adverse claimants. As much as I have studied the petition in the suit, I do not find a single legal reason adduced in that sense. It appears that the adverse party understands that the Messrs. Elias sold only thirty-two
415 sitios of land and not their overplus (demasias) and therefore believe that they have some right to them. But such belief is truly erroneous. If the aforesaid deed of sale made mention of only thirty-two sitios, it was because these appear covered by the titles which they delivered and which in due form I enclose on forty-four written leaves. For the due information of the court I ought to set out that the subjoined titles refer only to the lands called: Naidenibacachi, Agua Prieta, and Santa Barbara, which are composed of eighteen sitios, twelve and a half caballerias, and to those of Agua de Baltazar, Lo del Gato, Lo de Tomas Romero and Lo de las Mesteñas, of ten and one-third and three and one-fifth caballerias, those of San Rafael del Valle not figuring for the present, as there is no question whatever with regard to them, and there is on the overplus of the former. On the other hand, it does not appear in the deed of sale that the vendors had reserved any right

whatever with respect to the aforesaid overplus (demasias), nor could such reservation exist, inasmuch as at the time of its execution they belonged to the federation, and it was not till the 22nd of July, 1863, when the President of the Republic, competently authorized, conceded to the possessors and by way of grace the authority to denounce them to the extent they had for a certain remuneration. Besides, what is the action undertaken by the adverse party in the present adverse suit? It is not set out nor is it inferred from the context of his petition, but even when this were not so, I understand that, in the present case, it can have no suspensive effect in the course of the suit of the denouncement of my principal. For the considerations stated—

I ask you to be pleased to consider the present suit answered and in condition for judgment in the sense I asked for at the beginning of the present petition. I protest that I do not proceed in bad faith.

Guaymas, November 7, 1880.

J. P. M. CAMOU.

Licentiate, JESUS M. GAXIOLA.

Guaymas, June 6, 1887.—Having examined the present adverse suit brought by citizen Plutarco Elias for himself and as the attorney of his older brothers, Rafael and Alejandro Elias, and of his mother, Mrs. Bernardina Lucero de Elias, whose has parental control of her minor children, Maria de Jesus, Maria Dolores, Carlos and Manuel Elias, against the denouncement of the overplus (demasias) of the lands called: Agua Prieta, Santa Barbara, Naidenibacachi, Agua de Baltazar, Lo del Gato, Lo de Tomas Romero, Lo de las Mesteñas, situated in the district of Arizpe, made by their owner, Mr. Jose Camou;

Having examined the statement of the plaintiff in his petition in the suit, and the reply of the defendant, the recommendation of the promotor fiscal, the proofs rendered by the parties, the last allegations, the various incidents that have arisen in this suit adverse to the petitioners, the summons for final sentence and all else set out in the proceedings and proper to examine.

Resulting: That, on the 25th of June, 1862, citizen Jose Juan, Jose Maria and Manuel Elias and their mother, Mrs. Guadalupe Perez de Elias, executed in the city of Ures and before the judge of first instance of the district, Ignacio Lopez, a deed for the retrovendition of the ranches already mentioned and which measure all together thirty-two sitios for raising large stock and horses, in favor the Messrs. Camou Brothers for the sum of twelve thousand 416 dollars, and for the term of three years counted from that date.

Resulting: That the Messrs. Camou Brothers, before the same court, on the 17th of March, 1869, asked for the ratification of the retrovendition to which reference is made, it having been made by citizen Jose Maria Elias for himself and in the representation of his mother, Mrs. Guadalupe Perez, and his brother, Manuel Elias, as also in that of Mrs. Bernardina Lucero then a widow, as her hus-

band, Mr. Jose Juan, had died the 8th of November, 1865, date on which the term of the retrovendition had already expired.

Resulting: That the company known in this State under the firm name of Camou Brothers, had been dissolved the 20th of April, 1880, in one of its clauses, the fourth, it states that the managing partner, citizen Jose Camou, Son, for his representation in said company, has adjudicated to him, among other things, the lands of which mention has already been made, and the overplus of which are the object of this suit.

Resulting: That citizen Jose Camou, Son, as the owner of those lands, denounced their overplus (demasias) before this district court on the 22nd of April, 1880, and admitted on the 31st of May of the same year, citizen Plutarco Elias having opposed that denouncement the 30th of June of the same year, and on the 13th of October he was instructed to show his authority as the representative of his minor brothers, to which his petition in opposition refers, and when the general power of attorney was shown as executed by Mrs. Bernardina Lucero for herself and in the name of her minor children, Jesus, Dolores, Carlos, and Manuel Elias, and Rafael and Alejandro Elias, of lawful age, in his favor on October 20th, he was ordered to formulate his opposition, within the term of three days and not till the 15th of November of said year did he present his petition formulating said opposition, the suit following in regular course, which was interrupted by the various exceptions in delay and inadmissible recourses interposed by the plaintiff, which has been the cause of not being possible to conclude this suit in nearly seven years since it started to the prejudice, in a serious manner, to the interests of the treasury.

Considering: That when the heirs of Mr. Rafael Elias sold those properties with the stipulation of retrovendition, which sale has been consummated because it has not been redeemed within the proper time, they have made it without any reservation whatever with all the rights they had to those same lands, transferring them to Messrs. Camou Brothers and which today belong to citizen Jose Camou, Son.

Considering: That, under the existing law on vacant lands of the 20th of July, 1863, articles 5th and 8th, the owner of a tract of land undoubtedly has the right and even the preference to the overplus that property may have when denounced in proper time and when no other person has made it before.

Considering: That the adverse claimants, according to the antecedents and evidence that exists in this district court, have already denounced thirty-three thousand eight hundred and fifty-eight hectares, eighty-seven ares and eighty-one centiares, 33,858 hectares, 87 ares and 81 centiares, of land in this State in the following manner: Already covered by title 10,000 hectares adjoining Mr. Cirilo Rochin and Urbano Borquez in the same district: 6,000 hectares, six thousand hectares, in a tract called El Leoncito in said district, for which titles they have not yet paid, being seven thousand and seventy-seven hectares, nine ares, and eighty-one centiares, 7,077 hectares, 09 ares and eighty-one centiares, adjudicated as the third part of 21,213 hectares, 29 ares and 44 centiares, twenty-

one thousand two hundred and thirteen hectares, twenty-nine ares and forty-four centiares, in the overplus (demasias) of San Pedro, also in the same district, and 10,781 hectares, 78 ares, ten thousand seven hundred and eighty-one hectares and seventy-eight ares, as the third part of thirty-two thousand three hundred and forty-five hectares thirty-four ares, 32,345 hectares and 34 ares, as the overplus (demasias) denounced in San Jose de la Cienega de Heredia, district of Magdalena, and in consequence there corresponds to each one more than two thousand five hundred hectares which they are allowed to obtain under the law on vacant lands of July 20, 1863, article 2.

Considering: That in conformity and accordance with the various provisions of the department of public works and among them that recently received dated February 26 of the present year and which literally says: "Report having been made to the President of the Republic with your communication dated the 17th instant, in which you consult as to whether the denouncers of overplus (demasias) of whatever extent that exceeds two thousand five hundred hectares, are in aptitude to denounce and acquire other vacant land (baldio) to the same extent, under the right which the law gives to every inhabitant of the Republic therefor, the supreme magistrate has been pleased to direct that it be stated to you that article 5 of the law of July 22, 1863, gives the right to the possessor of a tract of vacant land (baldio) of whatever extent it may be to have them adjudicated to them, in which case are included the overplus (demasias) in the properties of private individuals, but that as this overplus (demasias) is nothing else than lands submitted for their acquisition to the same provisions of said law, it is deduced that he who has obtained title to said overplus (demasias) to an extent of two thousand five hundred hectares or more has no right to denounce another tract of vacant land (baldio), except only when the area acquired is less than two thousand five hundred hectares, for he can then petition for the completion of said amount under article 2 of said law. Liberty and constitution. Mexico, February 26, 1887. By order of the secretary. M. Fernandez, chief clerk. To the district judge in Sonora, Guaymas," all and each one of the opponents and heirs of Mr. Jose Juan Elias now have no right to denounce lands in the Republic, since in the overplus in which they have done so they have exceeded the two thousand five hundred hectares which the law fixes as a maximum.

Considering: That the lands that are questioned in this suit should be considered only as overplus (demasias) for their owner and for outsiders such as the opponents they must be considered as vacant lands (baldio) and under this character these have no right to be admitted as denouncers since they have already obtained an area greater than that designated by the law and for the same reason are incapacitated from obtaining more vacant land (baldio) in the Republic.

Taking into consideration finally the reasons and legal grounds in which the defendant supports his answer alleging good proof,

this court, in view of all that has now been stated, definitively judging, decides :

1st. The petition of the opponents to be preferred in the denouncement of the overplus (demasías) of the ranches called Agua Prieta, Santa Barbara, Naidenibacachi, Agua de Baltazar, Lo del Gato, Lo de Tomas Romero, and Lo de las Mesteñas, situated in the district of Arizpe, made by their owner, citizen Jose Camou, Son, is not admitted, and in consequence this denouncement will be continued through all its proceedings until the respective title is obtained.

418 2nd. The opposing litigants are condemned in the costs of this suit.

3rd. Let them be notified. The district judge so decreed and signed it before me. I attest.

Licentiate, JOSE MONTEVERDE.

RAMON MARTINEZ, *Secretary*.

(Form No. 88.)

Form for the Authentication of Signatures.

CONSULAR AGENCY OF THE UNITED STATES, *May 9th, 1899.*

I, Frank M. Crocker, consular agent of the United States at Guaymas, Mex., do hereby certify that the signature of Guillermo P. Cota, secretary to F. R. Nieto, federal judge for the State of Sonora, at the foot of the paper hereto annexed, is his true and genuine signature, and that the said Guillermo P. Cota is personally known to me.

In witness whereof I have hereunto set my hand and affixed the seal of the consular agency, at Guaymas, Mex., this day and year next above written, and of the Independence of the United States the 123rd.

(Signed)
[SEAL]

FRANK M. CROCKER,
U. S. Consular Agent.

(Endorsed :) Filed in the office of the clerk, court of private land claims, June 1, 1899. Jas. H. Reeder, clerk, by R. L. Long, deputy.

DEFENDANT'S EXHIBIT No. 7.

(Here follows diagram marked page 419.)

DEFENDANT'S EXHIBIT No. 8.

(Here follows diagram marked page 420.)

DEFENDANT'S EXHIBIT No. 9.

(Here follows diagram marked p. 421.)

DEFENDANT'S EXHIBIT No. 10.

(Here follows diagram marked page 422.)

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123 And be it further remembered that on the same day, to wit, the second day of June, A. D. 1899, there was filed in the office of the clerk a stipulation; which stipulation is in the words and figures following, to wit:

In the Court of Private Land Claims, Tucson, Arizona.

RELOJ CATTLE CO.	}	San Pedro Grant, No. 10.
vs.		
UNITED STATES.		

It is hereby stipulated between the parties that the above-entitled cause shall stand submitted upon the pleadings heretofore filed and the evidence heretofore taken, with right to either counsel to file briefs or written arguments within ten days from this date.

Tucson, Arizona, June 2, 1899.

FRANK H. HEREFORD,
Attorneys for Plaintiff.
MATT. G. REYNOLDS,
United States Attorney.

Endorsements: C. 10. Stipulation to submit cause. Filed in the office of the clerk, court of private land claims, June 2, 1899. Jas. H. Reeder, clerk, by R. L. Long, deputy.

424 And be it further remembered that on the second day of June, A. D. 1899, the court made the following order:

THE RELOJ CATTLE COMPANY	}	No. 10.
vs.		
THE UNITED STATES ET AL.		

Pursuant to stipulation this day filed between counsel for plaintiff and the United States, it is ordered that the above-entitled cause stands submitted upon the pleadings heretofore filed and the evidence hereinbefore taken, with a right to either counsel to file briefs or written arguments within ten days from this date.

And be it further remembered that thereafter, to wit, on the twenty-seventh day of November, A. D. 1899, the same being the 53rd day of the January term, 1899, the court announced its decision as follows, to wit:

THE RELOJ CATTLE COMPANY	}	No. 10.
vs.		
THE UNITED STATES ET AL.		

This cause having come on to be heard at a former session of this court and having been submitted upon full legal proof and hearing, and the court, upon consideration and examination of said cause, being sufficiently advised in the premises, doth find that said petition for the confirmation of the private land claim known as and

called the San Pedro grant, alleged to be situate in the county of Cochise, Territory of Arizona, in the valley on either side of the San Pedro river, easterly from the Huachuca mountains and immediately north of the boundary line between the Republic of

425 Mexico and the United States of America, and more particularly described in plaintiff's petition on file in this cause, has not been sustained by satisfactory proof, and that the title so asserted to that tract of land, a petition for which is alleged to have been presented on March 12th, 1821, by one Jose de Jesus Perez to the governor intendant of the province of Sonora and Sinaloa, and a grant of which is alleged to have been issued to one Rafael Elias by Jose Maria Mendoza, treasurer general of the State of Sonora, on May 8th, 1833, is of no validity, and that the grant or concession so claimed is not such an one as the United States are bound to recognize and confirm by virtue of the treaties of cession by Mexico to the United States, by the laws of nations, or by the laws or ordinances of Spain or Mexico.

It is therefore ordered, adjudged, and decreed that the said claim to the said tract of land be, and the same is hereby, rejected and said petition dismissed.

Wherefore plaintiff prays an appeal to the Supreme Court of the United States, which is thereupon in open court allowed accordingly.

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Opinion of the Court.

THE RELOJ CATTLE CO. }
 vs. } San Pedro Grant.
 THE UNITED STATES. }

The petition for the grant in controversy was made by Jose de Jesus Perez in March, 1821, in which he says: "I apply to the superior authority of Your Excellency (with prior permission of my father) in order that, pursuant to the provisions of the national laws and the terms of the royal cedula of February 14, 1805, the depopulated place down the San Pedro river situate in this province, toward the north, on the hostile frontier, close to the abandoned place of Las Nutrias, be considered registered," etc. This cedula forbade the adjudication or granting of more than three or four sitios. Accordingly the petition continues: * * * "I pray you to issue commissions for the execution of the necessary proceedings, ocular examination, reconnoissance, survey, appraisement, publication, possession, and final sale of the four sitios." In due course of proceeding four sitios were sold and paid for and the patent issued to the parties for that amount and no more. This makes a sale by quantity, as this court and the Supreme Court of the United States uniformly decided.

The surveyor—by mistake, apparently—included in his survey an area equal to about six and one-half sitios, but this does not alter the law that all the parties were entitled to were the four sitios

427 bought and paid for. That this was the area of their claims is fully shown by the fact that the owners of the Cabeda legal in 1880-'86 denounced the demasias of this tract to the Mexican government, and that government located the Cabeda legal as four sitios and locates it wholly within its territory south of the international boundary line.

The fact that the owners of this grant have secured full satisfaction of all they were entitled to—the four sitios bought and paid for from the Mexican government—is conclusive.

Ainsa vs. United States, 161 U. S., 234.

Ely's Administrator vs. U. S., 171 U. S., 240.

4 The claim is rejected and the petition is dismissed.

(Endorsed:) Opinion of the court, by Associate Justice Fuller. Filed in the office of the clerk, court of private land claims, November 27, 1899. Jas. H. Reeder, clerk, by R. L. Long, dep.

428

Certificate of the Clerk.

UNITED STATES OF AMERICA, }
Territory of Arizona, } ss:

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing is a full, true, and correct transcript of the pleadings, testimony, proceedings, judgment, opinion of the court, and order allowing appeal in the case entitled *The Reloj Cattle Company vs. The United States and E. J. Roberts*, No. 10, San Pedro grant, as the same appears of record in my office, except Plaintiff's Exhibits Numbers 19, 20, 21, 22, and 23, and also excepting Defendant's Exhibit numbered 4, which are omitted from this transcript.

Given under my hand and the seal of said court this twenty-fifth day of January, A. D. 1900.

[Seal Court of Private Land Claims, Tucson, Arizona.]

JAMES H. REEDER, *Clerk*,
By R. L. LONG, *Deputy Clerk*.

429 UNITED STATES OF AMERICA, }
Territory of Arizona, } ss:

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the document hereto attached and marked "Defendant's Exhibit No. 4" is a true copy of the original document introduced in evidence on the trial of the cause entitled *The Reloj Cattle Company vs. The United States et al.*, No. 10, San Pedro grant, and is a part of the record of said cause.

Given under my hand and the seal of said court this 27th day of January, 1900.

[Seal Court of Private Land Claims, Tucson, Arizona.]

JAMES H. REEDER, *Clerk*,
By R. L. LONG, *Deputy*.

DEFENDANT'S EXHIBIT No. 4.

Testimonio del expediente de denuncia del terreno denominado "San Pedro," adjudicado á favor de los C. C. Manuel y José Ma. Elias y herederos de Don José Juan Elias, Rafael, Cárlos, Manuel, Alejandro y Señoras Jesus y Dolores, todos Elias.

430 Ciudadano Juez de Distrito.

José A. Marquez, como apoderado del Co. Manuel Elias, vecino de Tecoripa, según el instrumento público, que exivo y pido se me devuelva por ser general, ante la justificación de Ud. y como mejor sea procedente en derecho, digo: que á nombre de mi dicho (representante) representado, Manuel Elias, pongo el mas formal denuncia á las demasias que pueda tener el rancho de "San Pedro" en jurisdicción del pueblo de Santa Cruz, del Distrito de Magdalena, de cuyo rancho es condueño mi poderdante.—Por lo tanto á Ud. pido que dándome por presentado con el presente escrito, se sirva admitirlo y nombrar agrimensor para que practique el apeo y deslinde, á efecto de que se me otorguen los títulos por las expresadas demasias; ofreciendo pagar á la Hacienda pública por mi dicho poderdante los derechos que sean de justicia.—Protesto buena fe.—Guaymas, Julio ocho de mil ochocientos ochenta.—J. A. Marquez.—Un timbre de cincuenta centavos debidamente cancelado.—En la misma fecha se cumplió con lo mandado en el auto anterior.—Conste.—En veinte de Julio doy fe haber visto y devuelto al interesado un poder general otorgado por el Co. Manuel Elias, y la Señora Eloisa Suarez, su esposa, á favor del ciudadano Manuel Aguayo, en el pueblo de Tecoripa, el dos del corriente, bastantado el siete del mismo por el Licenciado Ramon Martinez: contiene las cláusulas de su especie y las correspondientes estampillas debidamente canceladas.—En el mismo siete de Julio fué sustituido este poder por el Co. Aguayo á favor del Co. José A. Marquez, en este puerto ante el Escribanó público Lic. José Monteverde, conteniendo dicha (poder) sustitución la correspondiente estampilla debidamente cancelada.—Lo que asiento por diligencia.—Manuel Altamira Alas.—Srio.—Una estampilla de cincuenta centavos debidamente cancelada.—Co. Juez de Distrito. José A. Marquez de esta vecindad como apoderado del Sr. Manuel Elias, según consta del poder que tengo presentado ante ese Juzgado de su digno cargo, del cual tomada razón que sea pido se me devuelva por ser general, ante la justificación de V. expongo: Que haciendo uso del derecho que me concede el Artículo 148 de la Ley de 4 de Mayo de 1857, recuso al personal de ese Juzgado, sin expresión de causa, dejándolo en su buena opinión y fama en el juicio de denuncia de las demasias del rancho de "San Pedro" que tengo promovido á nombre de mi representado.—Por tanto—á Ud. pido se sirva pasar las (tramitaciones) actuaciones al Juez que deba conocer de su tramitación. Es justicia y protesto no proceder de malicia y lo necesario.—Guaymas, Junio once de mil ochocientos ochenta y uno.—Lic. Jesus Ma. Gaxiola.—J. A. Marquez.—rúbricas.—Presentado el sábado once de Junio.—Conste.—Guaymas, Junio

trece de mil ochocientos ochenta y uno.—Considerando que las recusaciones solo proceden y pueden interponerse por los litigantes en un juicio: que las diligencias que el Juzgado de Distrito practica en la tramitación de un expediente formado con motivo del denuncia de un terreno baldio no importan acto alguno de jurisdicción contenciosa y por lo mismo no constituyen un juicio supuesto que juicio es: “la controversia y decisión legítima de una causa ante y por el juez competente, ó sea la legítima discusión de un negocio entre actor y reo ante juez competente que lo dirige y determina con su decisión ó sentencia definitiva (Escriche, voz “juicio”) y en las diligencias de que se trata, no hay contraversia alguna ni existe contienda entre partes que deba resolverse por sentencia definitiva,—por estas consideraciones se declara que no es de admitirse y se deshecha la recusación interpuesta por el promovente.—Lo mandó y firmó el

Co. Juez de Distrito de Sonora.—Aguilar—rúbrica.—A. Leonardo Escobar—A. Enrique Fontes.—rúbricas.—En catorce
431 del mismo se notificó el auto anterior al Co. José A. Marquez, y enterado dijo: que lo oyó y suplica al Juzgado se sirva darle una copia simple del auto que se le notifica y firmó.—Aguilar—José A. Marquez—rúbricas. A. Leonardo G. Escobar—A. Enrique Fontes.—rúbricas.—Se cumplió con lo mandado. Conste.—Un timbre de cincuenta centavos debidamente cancelado. Co. Juez de Distrito: José A. Marquez, como apoderado del ciudadano Manuel Elias, según el instrumento público que acompaño y pido se me devuelva por ser general, ante la justificación de Ud. me presento y digo: Que en el denuncia de las demasias del rancho de “San Pedro” de que es condueño mi poderdante, el Juzgado del digno cargo cargo de Ud. se sirvió nombrar el práctico agrimensor, Don Alejandro Clark.—Este señor no ha querido practicar las medidas correspondientes, tanto de dichas demasias como de los baldios pedidos por mi poderdante y su Sra. esposa, Eloisa S. de Elias, entre el expresado rancho y el pueblo de Terrenate, sin embargo de la reiterada exigencia de D. Manuel Elias que personalmente ha hecho dos viajes de doscientas leguas hasta el punto en donde se halla dicho Sr. Clark, quien ha demostrado con pretextos frívolos no poder ejecutar la mensura.—Por lo expuesto: Al Juzgado pido se sirva relevar al dicho agrimensor práctico, Sr. Clark, con otra persona que le parezca conveniente á fin de que no se entorpezca la tramitación de los juicios que tengo promovidos con grave perjuicio de la parte que represento. Así es de hacerse en justicia que protesto con lo demas necesario.—Guaymas, Mayo diez y ocho de mil ochocientos ochenta y uno.—J. A. Marquez, rúbrica. Presentado en su fecha. Conste.—Un timbre de cincuenta centavos debidamente cancelado. Co. Juez de Distrito: José A. Marquez, apoderado sustituto de Dn. Manuel Elias, como lo tengo justificado en el juicio de denuncia de las demasias del rancho de “San Pedro,” jurisdicción del Distrito de Magdalena, ante Ud. en la forma que mejor proceda en derecho, me presento y digo: Que estando próximo á cumplirse el término fijado por ese Juzgado para el apeo y deslinde, el cual se vence el trece de (Julio) Octubre venidero, y no habiendo sido posible conseguir el agrimensor, Dn. Alejandro G. Clark, prac-

ticarse la mensura debida á la abundante estación de lluvias en la Frontera, donde está situado el terreno, A Ud. pido se sirva tener á bien ampliar dicho término, á fin de que pueda ejecutarse la medida con arreglo á la ley.—Es justicia que protesto con lo demas necesario.—Guaymas, Septiembre veinte de mil ochocientos ochenta.—J. A. Marquez.—Recibido en su fecha. Conste.—Guaymas, Septiembre veintinueve de mil ochocientos ochenta.—Visto lo expuesto por el apoderado del denunciante se le conceden treinta dias mas, para que presente la medida del terreno denunciado en el presente expediente, apercibido que de no presentarla se dará irremisiblemente por desierto el denuncia.—Lo mandó y firmó el Co. Licenciado Jesus Maria Aguilar, (Juez) Juez de Distrito en el Estado.—Doy fe.—Aguilar.—Manuel Altamira Alas.—rúbricas.—En seguida presente el Co. José A. Marquez, apoderado del denunciante é impuesto del auto anterior dijo: lo oye, está conforme y firma.—Doy fe.—Manuel Altamira Alas.—J. A. Marquez.—rúbricas.—Dos timbres de veinticinco centavos debidamente cancelados.—Ciudadano Juez de Distrito: José A. Marquez en representación del ciudadano Manuel Elias, cuya personalidad tengo acreditada en el denuncia de demasias del rancho de San Pedro, ante la notoria justificación de Ud. me presento y con el debido respeto digo: Que aunque sin embargo de la próroga que el Juzgado de su muy digno cargo se sirvió concederme para la práctica de las medidas que debia efectuar el agrimensor. Alejandro J. Clark, por los motivos que constan en mi petición agregada al juicio de denuncia, me veo precisado á molestar la atención de Vd. suplicándole tenga á bien decretar la ampliación del término concedido; pues tengo noticias positivas de la enfermedad del mencionado agrimensor y que por tal motivo no ha podido dar cumplimiento con sus obligaciones.—(Por tanto) Por tanto á Ud. pido se sirva decretar conforme solicito, á fin de que no se tenga á mi representado como denunciante moroso.—Es así de justicia que protesto con lo demas necesario.—Guaymas, Diciembre veintisiete de mil ochocientos ochenta.—J. A. Marquez.—Recibido á las cinco de la tarde del veintisiete de Diciembre.—Conste. Guaymas, Julio veintiuno de mil ochocientos ochenta y uno.—Habiendo trascurrido con exceso el término dentro del cual debieron haberse presentado las diligencias de mensura al Juzgado, según se previno en auto de fecha trece de Julio de mil ochocientos ochenta y teniendo en consideración que tanto en dicho auto como en el que se concedió posteriormente una próroga de treinta dias para la presentación de dichas diligencias se hizo saber al denunciante que de no presentarlas dentro del término fijado, se tendria por desierto el denuncia, el Juzgado de clara que no es de accederse á lo que se solicita en el presente escrito y en consecuencia se declara desierto el denuncia de las demasias del rancho de San Pedro hecho por el Co. José A. Marquez en representación del Co. Manuel Elias. Lo decretó y firmó el Co. Juez de Distrito de Sonora.—Aguilar—rúbrica.—A. Leonardo G. Escobar.—A. Enrique Fontes.—rúbricas.—En la misma fecha se notificó el auto anterior al Sr. José A. Marquez y enterado dijo: que lo oye y con el debido respeto interpone el recurso de apelación del auto que se le notificó.—Aguilar—J. A. Marquez.—

rúbricas.—A. Leonardo G. Escobar.—Enrique Fontes.—rúbricas.—Guaymas, Agosto primero de mil ochocientos ochenta y uno.—Visto el recurso de apelación interpuesto por el Co. José A. Marquez, en representación del Sr. Manuel Elias, del auto de este Juzgado de veintuno de Julio último en virtud del cual se declaró desierto el denuncia de las demasías del rancho de "San Pedro," y considerando que la ley de 22 de Julio de 1863 y circular de 20 de Abril de 1861, con fundamento de las cuales se decretó dicho auto no conceden recurso alguno contra la declaración de que se trata; que en el denuncia y adjudicación de terrenos baldios, los Juzgados (los) Federales en virtud de la competencia que les da el artículo 14 de la misma ley como proceden mas bien (de) agentes de la Secretaria de Fomento, que como funcionarios judiciales propiamente dichos, supuesto que la validez de las diligencias que practican y que ántes se hallaban encomendadas á funcionarios administrativos quedan sujas á la revisión de la misma Secretaria, quien puede confirmarlas ó revocarlas despues de hecho por el Juzgado la adjudicación, y por consiguiente en dichos trámites deben observarse únicamente las prescripciones de la ley mencionada y no los procedimientos y prácticas judiciales á no ser (un) que haya oposición de tercero, (terreno) verdadera contención, en cuyo caso debiendo abrirse conforme al artículo 17 de la ley un juicio, debe sustentarse éste conforme á las leyes generales que arreglan la sustanciación y procedimientos de las contraversias judiciales: Finalmente que siendo el espíritu de la ley de baldios vigente la subdivisión de los terrenos nacionales y adjudicación legal de ellos á los particulares en el menor tiempo posible á fin de obtener por ese medio la colonización y el desarrollo de la riqueza pública seria contrariar dicho espíritu y hacer interminable la adjudicación de baldios admitir recursos que nadie hasta

433 hoy ha interpuesto contra la declaración de deserción de un denuncia. Por estas consideraciones se declara que es de

deshecharse y se deshecha el recurso de apelación interpuesto. Lo proveyó y firmó el Co. Juez de Distrito de Sonora, con los de asistencia ordinaria. Aguilar.—rúbrica.—Leonardo G. Escobar.—Enrique Fontes. A.—rúbricas.—En la misma fecha se notificó el auto anterior al Co. José A. Marquez y enterado dijo: que lo oye y que suplica al Sr. Juez se sirva mandarle dar una copia simple del auto anterior para contestar por escrito lo que á su derecho con venga.—Aguilar.—rúbrica.—J. A. Marquez.—A. Leonardo G. Escobar.—Enrique Fontes.—Un timbre de cincuenta centavos debidamente cancelado.—Co. Juez de Distrito.—José A. Marquez, como apoderado del ciudadano Manuel Elias, como lo tengo acreditado con el poder general que existe en ese Juzgado y pido se me devuelva, ante la justificación de Vd. como mejor proceda en derecho me presento y digo: Que causando á mi parte perjuicio irreparable el auto de ese mismo Juzgado de 21 de Julio último en que se declaró desierto el denuncia de demasías de "Sn Pedro," de que es condueño mi poderdante, interpusé verbalmente el recurso de apelación el cual se me ha (bia) deshechado con fecha 1º del corriente. En tal virtud y como tal resolución agravia los derechos de mi representado interpongo el recurso de denegada apelación y á Ud. Cº.

Juez pido se sirva admitirla mandando expedir el certificado correspondiente del auto apelado del en que se deshechó la apelación y de lo demas conducente con inserción del presente escrito conforme lo dispone el artículo 1° de la Ley de 18 de Marzo de 1840, fijándose un término dentro del cual deberé presentarme ante el Tribunal Superior. Así procede en rigor de justicia que protesto. Guaymas, Agosto tres de mil ochocientos ochenta y uno. J. A. Marquez.—rúbrica. Lic. Jesus Ma. Gaxiola.—rúbricas.—Presentado en su fecha. Conste. Guaymas, Agosto cuatro de mil ochocientos ochenta y uno. Expídase el certificado de denegada apelación que solicita con los insertos á que se refiere la ley de 18 de Marzo de 1840, concediéndose al interesado el plazo de treinta dias contados desde la fecha en que se expida el certificado, para que se presente al Tribunal de Circuito por sí ó por apoderado. Lo proveyó y firmó el C. Juez de Distrito de Sonora. Aguilar.—rúbrica.—Leonardo G. Escobar.—A.—Enrique Fontes.—rúbricas.—En la misma fecha se notificó el auto anterior al C. José A. Marquez y enterado dijo: que lo oye y firma.—Aguilar.—J. A. Marquez.—rúbricas. A.—Leonardo G. Escobar.—A.—Enrique Fontes.—rúbricas.—En la fecha se expidió el certificado que manda el auto anterior. Conste. Un timbre de cincuenta centavos debidamente cancelado.—Guaymas, Noviembre catorce de mil ochocientos ochenta y uno.—De conformidad con lo declarado con el Tribunal de Circuito en su auto de catorce de Octubre último que en una foja útil y en copia certificada se agrega á este expediente, queda admitida la apelación del auto pronunciado por este Juzgado en veintiuno de Julio último, señalándose al apelante el término de treinta dias contados desde esta fecha para que se presente á mejorar el recurso ante el superior. Notifíquese y remítase el expediente por el primer correo ordinario al Tribunal de Circuito para los efectos legales. El C. Juez de Distrito del Estado lo proveyó y firmó. Aguilar.—rúbrica.—A.—Enrique Fontes.—A.—Leonardo G. Escobar.—rúbricas.—En seguida se notificó el auto anterior al C. José Marquez y enterado dijo: Que lo oye y firmó.—Aguilar.—rúbrica.—J. Marquez.—A.—Enrique Fontes.—A. Leonardo G. Escobar.—En Diez y seis del mismo y en diez fojas útiles se remite este expediente al Tribunal de Circuito como está mandado. Conste.—Un timbre de cincuenta centavos debidamente cancelado.—Culiacan, Octubre catorce de 434 mil ochocientos ochenta y uno.—Visto el recurso de denegada apelación interpuesto por el C. José A. Marquez, en representación de Dn. Manuel Elias, contra el auto del Juez de Distrito de Sonora de 1° de Agosto último, por el que declaró inapelable el auto de 21 de Julio en que dió por desierto el denuncia hecho por Elias de las demasias del rancho de "Sn Pedro;" y considerando 1° que aunque la ley de 20 de Julio de 1863 sobre enagenación de terrenos baldios, no declara apelables las distintas resoluciones que el Juez de Distrito dé en la tramitación de un denuncia y aunque la providencia de adjudicación no se ejecute sin la aprobación de la Secretaria de Fomento, sin embargo sin embargo el Juez ejerce funciones judiciales en todo lo relativo (á todo) al deslinde, apeo y mensura del terreno, procediendo no con el simple carácter de agente

del Ejecutivo, sino en desempeño de funciones propias de su jurisdicción; 2°. Que en consecuencia, sus providencias en la tramitación del denuncia, tienen los mismos recursos que las leyes conceden en los negocios de jurisdicción contenciosa ó voluntaria, según el caso; 3°. Que la providencia del Juzgado declarando desierto el denuncia resuelve de una manera definitiva sobre el derecho del denunciante al terreno denunciado, y por lo mismo, le causa gravámen irreparable; 4°. Que en consecuencia, dicha (esa) providencia es apelable conforme á las leyes 13 tit. 23; part. 3a y la, tit. 20, lib. XI, Nov. Rec. Por tanto, este Tribunal resuelve: 1°. Se revoca el auto del inferior de 1°. de Agosto, por el cual declaró inapelable el auto de 21 de Julio próximo anterior, y se declara admisible la apelación interpuesta. 2°. Con copia de la presente, devuélvase al inferior los autos. Asi el Magistrado de Circuito lo decretó y firmó con el secretario.—Luis G. Pacheco.—Francisco Salido Rodríguez.—Secretario.—Es copia de su original que certifico.—Culiacan, Octubre treinta y uno de mil ochocientos ochenta y uno. Francisco Salido Rodríguez. Srio. rúbrica.—Un timbre de cincuenta centavos debidamente cancelado.—Culiacan, Mayo veintitres de mil ochocientos ochenta y dos. Vistas las diligencias practicadas en el Juzgado de Distrito de Sonora, sobre (el) denuncia hecho por Dn. Manuel Elias de las demasias que pudiera tener el rancho de "San Pedro," sito en (la) jurisdicción del pueblo de Santa Cruz, Distrito de Magdalena, en aquel Estado: el auto del Juez de Distrito de 21 de Julio de mil ochocientos ochenta y uno, en que declaró desierto el expresado denuncia por no haber presentado el denunciante las diligencias de mensura en el plazo que le concedió el Juzgado: la apelación de dicho auto interpuesta por el representante de Elias, que negada le fué admitida por auto de este Tribunal visto lo expuesto en esta segunda instancia por la parte de Elias y el Promotor fiscal; y considerando 1°: que según consta de autos, admitido el denuncia por el Juzgado en 13 de Julio de mil ochocientos ochenta, nombró de agrimensor al Sr. Don Alejandro J. Clark, encomendando las diligencias de aceptación y protesta del perito, asi como las de mensura, al Juez de la Instancia del Distrito de Magdalena y advirtiéndolo al apoderado del interesado que si dentro de noventa dias, contados desde aquella fecha, no presentaba las diligencias de medida, se tendria por desierto el denuncia, cuyo plazo fué prorogado por el Juzgado en veintinueve de Septiembre del mismo año, por otros treinta dias, en diez y ocho de Mayo de mil ochocientos ochenta y uno solicitó el apoderado de Elias se nombrara otro perito, porque Clark con diversos pretextos no habia hecho la mensura, á lo que se negó el Juzgado declarando desierto el denuncia como se ha expuesto, por no haber presentado el interesado las diligencias de mensura en los plazos fijados;

435 Considerando 2°: Que tal deserción solo puede decretarse conforme á la ley de 20 de Julio de 1863, en el caso de que la suspensión en los trámites del denuncia provenga de culpa del denunciante, y en el presente caso no se ha justificado ésta; Considerando 3°: Que de autos aun no consta la aceptación del perito nombrado, ni que se hayan dictado por el Juzgado de Distrito providen-

cias relativas á la práctica de las diligencias de mensura, así por parte del perito como de la autoridad encargada de practicarlas, por tanto este Tribunal resuelve: con las proposiciones siguientes: Primera: Se revoca el auto del inferior de veintiuno de Julio de mil ochocientos ochenta y uno, que declaró desierto el denuncia hecho por Dn. Manuel Elias de las demasias que pudieran resultar en la remedida del rancho de "Sn. Pedro." Segunda: Continuarán los trámites del denuncia cuidando el inferior del cumplimiento de las disposiciones dictadas por el mismo con motivo de aquel. Tercero: Con copia de la presente devuelvanse al inferior los autos. Así el Magistrado del Tribunal del Circuito de Culiacan lo proveyó y firmó con testigos de asistencia. Luis G. Pacheco. A.—Pascual Bulnes.—A.—Jesus Yribe.—Es copia de su original que certifico, actuando con testigos de asistencia. Culiacan, Mayo veinticuatro de mil ochocientos ochenta y dos. Luis G. Pacheco.—P. Bulnes.—J. Yribe.—rúbricas.—Guaymas, Junio primero de mil ochocientos ochenta y dos. En cumplimiento de lo resuelto por el Tribunal de Circuito en su auto de veintitres de Mayo próximo pasado, que en dos fojas útiles y en copia certificada queda agregada á este expediente, continúense los trámites de este denuncia. Y en atención á las razones expuestas por el apoderado del denunciante en su escrito de 18 de Mayo del año próximo pasado se revoca el nombramiento de agrimensor hecho en Dn. Alejandro J. Clark, por auto de 13 de Julio de mil ochocientos ochenta y se nombra á Dn. Pedro B. Molera para que previa su aceptación y protesta que otorgará ante el Juez de la Instancia de Magdalena, á quien se librárá requisitoria con inserción de este auto y del escrito de denuncia, proceda á la remedida del rancho de "San Pedro," con vista de sus títulos y citación de colindantes, marcando tanto en el terreno como en el plano respectivo la cabida legal de dicho rancho y las demasias que contenga dentro de sus mojoneras; sujetando sus procedimientos á las leyes generales de 20 de Julio y 2 de Agosto de 1863; quedando advertido el apoderado del denunciante que deberá acompañarse á las diligencias de mensura el título original del expresado rancho á fin de tomarse la correspondiente razón; y de que si dentro de noventa dias contados desde que se notifique al agrimensor no se presentan las expresadas diligencias, se dará por desierto el denuncia. El Juez 1° Suplente de Distrito del Estado lo mandó y firmó. (Pedro) P. del Rincon.—rúbrica. A.—G. Rodriguez.—J. A. Marquez.—En dos del corriente se libró requisitoria como está mandado. Conste. rúbrica. En la misma fecha, notificado y enterado el C°. José A. Marquez del auto que antecede, dijo: que lo oye y firma.—Rincon.—J. A. Marquez.—rúbricas.—Un timbre de cincuenta centavos debidamente cancelado.—El C°. Pablo del Rincon, Juez 1° Suplente de Distrito de Sonora, en ejercicio: á Ud. C°. Juez de primera Instancia del Distrito de Magdalena, hago saber que en el expediente de denuncia de las demasias del rancho de "San Pedro," sito en esa jurisdicción, este Juzgado ha proveído el auto siguiente: Guaymas, Junio primero de mil ochocientos ochenta y dos. En cumplimiento de lo resuelto por el Tribunal de Circuito en su auto de 23 de Mayo ppdo., que en dos fojas útiles y en copia certificada queda agregada á este expediente,

436 continúense los trámites de este denuncia. Y en atención á las razones expuestas por el apoderado del denunciante en su escrito de diez y ocho de Mayo del año próximo pasado, se revoca el nombramiento de agrimensor hecho en D. Alejandro J. Clark, por auto de 13 de Julio de mil ochocientos ochenta y se nombra á Dn. Pedro B. Molera para que previa protesta y aceptación que otorgará ante el Juez de la Instancia de Magdalena, á quien se librará requisitoria con inserción de este auto y del escrito de denuncia, proceda á la remedida del rancho de "San Pedro" con vista de sus títulos y citación de colindantes; marcando tanto en el terreno como en el plano respectivo la cabida legal de dicho rancho y las demasias que contenga dentro de sus molhoneras, sujetando sus procedimientos á las leyes generales de 22 de Julio y de Agosto de 1863, quedando advertido el apoderado del denunciante que deberá acompañarse á las diligencias de mensura el título original del expresado rancho á fin de tomarse la correspondiente razón, y de que si dentro de noventa dias contados desde que se notifique al agrimensor no se presentan las expresadas diligencias, se dará por desierto el denuncia. El Juez 1º Suplente del Distrito del Estado lo mandó y firmó. P. del Rincon.—A.—Enrique Fontes.—A.—G. Rodriguez. El escrito de denuncia á que se hace referencia es como sigue: Ciudadano Juez de Distrito: José A. Marquez, como apoderado del Cº Manuel Elias, vecino de Tecoripa, según el instrumento público que exhibo y pido se me devuelva por ser general, ante la justificación de Ud. y como mejor sea procedente en derecho expongo: que á nombre de mi dicho representado, Manuel Elias, pongo el mas formal denuncia á las demasias que pueda tener el rancho de "San Pedro," en la jurisdicción del pueblo de Santa Cruz del Distrito de Magdalena, de cuyo rancho es condueño mi poderdante. Por lo tanto á Ud. pido que dándome por presentado con el presente escrito (exhorto) se sirva admitirlo y nombrar agrimensor para que practique el apeo y deslinde, á efecto de que se me otorguen los títulos por las expresadas demasias; ofreciendo pagar á la Hacienda pública por mi dicho poderdante los derechos que sean de justicia. Protesto buena fe. Guaymas, Julio ocho de mil ochocientos ochenta. J. A. Marquez. Y para que lo (que) por mi mandado en el auto inserto tenga su debido cumplimiento, á nombre de la justicia de la Unión exhorto y requiero á Ud., recomendándole de mi parte que luego de recibida la presente la mande guardar y cumplir entregándola al agrimensor nuevamente nombrado C. Pedro B. Molera, para el desempeño de la comisión que se le confiere. Es dada en Guaymas de Zaragoza, á dos de Junio de mil ochocientos ochenta y dos. P. del Rincon.—A.—José Rodriguez.—A.—G. Rodriguez.—Magdalena, Junio 15 de mil ochocientos ochenta y dos.—En esta fecha habiendo sido presente el agrimensor nombrado, Cº Pedro B. Molera, en su persona se le hizo saber dicho nombramiento y enterado dijo: que lo oye, acepta y protesta cumplir fiel y legalmente con la comisión que se le ha conferido, según su leal saber y entender, y firmó, conmigo, el Juez, y testigos. José C. Estrella.—Pedro B. Molera.—A.—Motrella.—A.—José R. Serrano.—En la fecha y en dos fojas útiles se pasaron estas diligencias al Sr. Molera. Conste.—En el rancho de San Pedro,

hoy día, diez y nueve de Julio de mil ochocientos ochenta y dos, habiéndome los interesados entregado el título de dicho rancho y dádome algunos informes, creo necesario ántes de proceder á la remediada, hacer un reconocimiento del terreno, por ser aquel bastante confuso; y sin embargo de que él que midió antiguamente de las distancias, los rumbos son incomprensibles, con la circunstancia á mas que como estos terrenos fueron invadidos por mucho tiempo del enemigo apache quedaron completamente despoblados no pudiéndolos poblar

437 hasta ahora despues y no se da razón de los lugares que dicho título cita.—Pedro B. Molera.—Acompañado de los interesados salimos de la casa del rancho en dirección al sur y caminamos como media legua en donde encontramos dos mojones de piedra avuononadas en las cumbres de unas lomas bajas al este del rio y valle de "San Pedro" cuyo rio corre de sur á norte, estando dichos mojones frente donde desemboca el bajío de las Nutrias, que por la distancia y lo que dice el título creo debe ser en estos contornos donde partieron la medida antigua, sin embargo que los interesados dicen les parece imposible dejaran los antiguos terreno baldio en el valle y que aquellos mojones son señales cuando abrieron la toma de la agua. Caminando despues rumbo al este, con el fin de encontrar mojoneras ó algo que determinara el terreno, creyendo ya que la distancia se separaba del título, les dije era inútil seguir mas adelante; que si bien es verdad todas las medidas antiguas son en exceso demasiadas no por esto debia regir cuando no se encontraba algo que lo acreditara; que creia según se desprende del título que cita "la caída del Picacho" era la sierra de San José el que podia determinarlo por ser el punto mas notable y único picacho en aquella dirección y al propio tiempo por la configuración del terreno, diciendo los interesados que no solamente sus antepasados si que tambien ellos habian poseido de buena fe y pacíficamente hasta la fecha colindando con los terrenos del Leoncito que tambien eran de su propiedad y habian tenido poblado con bienes todo el tiempo, arruinados por los Apaches. De todas maneras creí conveniente no separarme en lo posible de las distancias del título; teniendo la facultad los interesados hacer despues las objeciones de ley. Por todo lo expuesto y segun el título, tomando por base la distancia recorrida á lo largo del valle en las medidas antiguas y lo que se reconoce de San Pedro rio abajo, enseñó formaron una cruz en dirección á los cuatro rumbos, esto es, cinco leguaz de norte á sur y cuatro de oriente á poniente, y lo prueba tambien por formarla dicho valle, con las dos sierras, la de Espinola ó de Guachuca al poniente y la de San Jose al oriente, que sujetándolo al propio tiempo á los rumbos correctos se dará principio á la siguiente medida. En el rancho de San Pedro, á veinte y uno de Julio de mil ochocientos ochenta y dos.—Pedro B. Molera.—En el campo de las operaciones hoy día veintidos de Julio de Mil ochocientos ochenta y dos, se da principio á las operaciones de mensura, tomando los rumbos magnéticos, declinación 12° 23' E., partiendo de un punto en una especie de bajío pequeño al norte 2,500 metros del bajío, "Las Nutrias." De este punto norte 10,109.72 metros (norte 78° 14' E. 23,225 metros á lo largo de la linea limítrofe): á los 1,950 metros cruza el camino

que va de San Pedro á Santa Cruz; á los 3,925 metros á un punto desde donde al oeste 2,600 metros se encuentra el picacho mas alto de la cuchilla atravesada, y á los 10,109.72 á un puertecito al sur, pié de la Sierra de Espinola ó Guachuca, en donde (hay) hay un mojon grande de piedra amontonada bastante antiguo, siendo la parte oeste de esta linea terreno baldio. De aquí N. 78° 14' E., 23,225 metros á lo largo de la linea limítrofe entre Arizona y Sonora. A los 9,705 metros cruza el rio de San Pedro, que corre de sur á norte; á los 10,880 metros al monumento internacional, desde donde al S. 22° O, 1,700 metros se encuentran las casas vinateria y á los 23,225 metros se puso un mojon en una mesa grande al norte de la sierra de San José. De aquí sud 14,725 metros: á los 4,894 metros á la cumbre de la sierra de San José, el último picacho de la caida oeste, y á los 14,725 metros se puso un mojon en un bajio que lo forman por la parte del sur unas lomas altas, y por el norte otras peñascosas; en cuyo bajio pasa una vereda que va de "San Pedro" al "Leoncito," quedando dentro al N. O. una agua permanente, siendo la parte este de esta linea terreno baldio. De aquí O 22,753.36 metros, pasando por mesas grandes: á los 13,951.68 metros, dos mojones de piedra amontonada, colocados en la cumbre de unas lomas bajas, lado este del valle de San Pedro y despues cruzando dicho valle á los 22,753.36 metros al bajio anteriormente dicho y punto de partida, siendo la parte sud de esta linea terreno baldio, cuya área es de 28,265.11 hectáreas. En el campo de las operaciones á veintisiete de Julio de mil ochocientos ochenta y dos. Pedro B. Molera. En el campo de las operaciones, hoy dia veintiocho de Julio de mil ochocientos ochenta y dos, se da principio á las operaciones de mensura para la separación de la cabida legal, tomando los rumbos magnéticos, declinación 12° 23' E. partiendo del punto donde hay dos mojones de piedra amontonada colocados en la cumbre de unas lomas bajas lado este del valle de San Pedro, sobre la linea del lado sud de la cabida total, desde donde al norte 4° O, 2,550 metros se encuentran las casas del rancho y Aduana fronteriza. De este punto este 4,201.68 metros sobre la linea del lado sud de la cabida total hasta llegar al pié de una cordillera de lomas bajas lado sud de un bajio grande en donde se puso mojon. De aquí norte 8,403.36 metros hasta llegar á una mesa grande y chamisosa en donde se puso mojon. De aquí oeste 8,403.36 metros cruzando el rio y valle de San Pedro y despues lomas bajas y planas hasta llegar á una hondonada que la forma y está al lado norte de un arroyo seco en donde se puso mojon. De aquí sud 8,403.36 metros cruzando cordones largos, bajos y planos hasta llegar al extremo este de una especie de mesa lado oeste del valle de San Pedro sobre la linea del lado sud de la cabida total en donde se puso mojon. De aquí este 4,201.68 metros cruzando el valle y rio de San Pedro hasta los dos mojones antedichos y punto de partida, cuya área es de 7,061.64 hectáreas, que deducidas de la cabida total, ó sean 28,265.11 hectáreas resulta una demasia de 21,203.47 hectáreas. Como se nota no han comparecido colindantes por ser terreno baldio el de la parte sud, este y oeste y por la parte del norte la linea limítrofe corta el rancho de Sn. Pedro quedando una parte dentro de

Sonora y la otra dentro de Arizona; de manera que las propiedades particulares estan bastante retiradas. En el rancho de San Pedro, á treinta y uno de Julio de mil ochocientos ochenta y dos. Pedro B. Molera.—Manuel Elias.—rúbricas. Un timbre de cincuenta centavos debidamente cancelado.—Plutarco Elias, apoderado sustituto del Señor Manuel Elias, según lo tengo justificado en el expediente de denuncia que tiene hecho de un terreno baldio ubicado entre los ranchos de San Pedro y Terrenate, jurisdicción del Distrito de Magdalena, ante la debida justificación de Ud. me presento y expongo: que habiéndose recibido en ese Juzgado del digno cargo de Ud. las diligencias de mensura y mapa correspondientes al denuncia de las demasias que mi poderdante hizo del rancho de San Pedro de que es condueño hace algunos meses, vengo en suplica de Ud. se sirva mandar traer á la vista dicho expediente de denuncia de las demasias del rancho de San Pedro á efecto de que se dé el trámite que sea del caso. Por lo tanto á Ud. pido y suplico se sirva acceder á mi solicitud, por ser de justicia, que protesto en lo necesario.—Guaymas, Mayo catorce de mil ochocientos ochenta y tres.—P. Elias. Guaymas, Mayo quince de mil ochocientos ochenta y tres.—Pídase informe á quien corresponda sobre si la Hacienda pública ha estado en posesión de las demasias denunciadas. Lo mandó y firmó el C^o Juez de Distrito del Estado. 439 Doy fe. Escobar. A.—Cárlos Esquerro.—A.—Leonardo A. Moreno.—En la misma fecha, presente en este Juzgado el C^o Plutarco Elias, se le notificó el auto anterior y enterado dijo: que lo oye y firma. Doy fe. Escobar.—P. Elias.—rúbricas.—A.—Leonardo A. Moreno.—A.—José J. Ramirez.—rúbricas. En diez y siete del mismo mes y año y en diez y nueve fojas útiles se pasa este expediente á la Jefatura de Hacienda. Conste.—Un sello que dice: Jefatura de Hacienda, Estado de Sonora. Ciudadano Juez de Distrito: En cumplimiento del auto decretado por ese Juzgado con fecha quince del actual informo á Ud. que: no existiendo en la Jefatura de mi cargo archivo relativo al ramo de Fomento que sobre enagenación de terrenos baldios pudiera ministrar los datos necesarios, ignora por esta razón si las demasias denunciadas en el presente expediente estan ó no en posesión de la Hacienda Pública. Guaymas, Mayo diez y ocho de mil ochocientos ochenta y tres. C. E. de la J.—Suaréz.—rúbr-ca.—Recibido en su fecha. Conste. Guaymas, Mayo veintiuno de mil ochocientos ochenta y tres. Apareciendo del informe que antecede rendido por la Jefatura de Hacienda del Estado, que ignora si la Hacienda pública está en posesión de las demasias del terreno denunciado y mensurado á favor del C^o Manuel Elias, situado en el Distrito de Magdalena, en cumplimiento del artículo 17 de la Ley General de 22 de Julio de 1863, publíquese el denuncia por tres veces consecutivas en el periódico oficial del Estado por medio de edictos á fin de que los que se consideren con derecho á las expresadas demasias se presenten á este Juzgado dentro del término de treinta dias contados desde la primera publicación, apercibidos que de no verificarlo en el término señalado se adjudicarán á su denunciante. Lo mandó y firmó el C^o Juez de Distrito del Estado. Doy fe. Escobar.—A.—Leonardo A. Moreno.—José J. Ramirez.—En la misma fecha

presente en este Juzgado el C^o Plutarco Elias, apoderado del denunciante, y notificado el auto que antecede, dijo: que lo oye y firma. Escobar.—P. Elias.—rúbricas.—A.—Lorenzo A. Moreno. José J. Ramirez. En veintitres del mismo mes y en cumplimiento del auto anterior se mandó publicar en el periódico oficial del Estado el siguiente Edicto. Por el presente se cita y emplaza á los que se consideren con derecho á las demasias del terreno denominado de “San Pedro,” sito en el Distrito de Magdalena, denunciadas por el Sr. Manuel Elias, á fin que dentro del término de treinta dias contados desde la primera publicación del presente edicto, que por tres veces consecutivas se insertará en el Periódico Oficial del Estado, se presenten á este Juzgado, apercibidos de que no verificarlo se adjudicarán las expresadas demasias á su denunciante. Lo que asiento por diligencia. Doy fe. Escobar.—rúbrica.—Leonardo A. Moreno. José J. Ramirez.—rúbricas.—Octubre diez y siete de mil ochocientos ochenta y tres. El Juez que suscribe hace constar haber visto publicado por primera vez el número 22 del Periódico Oficial del Estado, La Constitución, correspondiente al viernes venticinco de Mayo del corriente año, el edicto que antecede, cuyo periódico no se agrega á este expediente por no venir mas que él de la colección. Lo que asiento por diligencia. Doy fe. Escobar. rúbrica.—A.—Leonardo Moreno.—A.—Em^o Pinas. Un sello que dice: República Mexicana, Gobierno del Estado libre y soberano de Sonora. Con el oficio de Ud. fecha veintitres del corriente, se recibió, en este Gobierno un edicto relativo al denuncia de las demasias del terreno nombrado “San Pedro” sito en el Distrito de Magdalena, hecho por el C^o Manuel Elias, cuyo edicto se ha mandado á la imprenta para su publicación en el Periódico Oficial del Estado, “La Constitución.” Libertad y Constitución. Hermosillo, Mayo veinticinco de mil ochocientos ochenta y tres. Felizardo Torres.—Ramon Corral, Srio.—Al Juez de Distrito del Estado: Libertad en la Constitución. Guaymas. Un timbre de cincuenta centavos debidamente cancelado. Ciudadano Juez de Distrito: Plutarco Elias en representación ya acreditada del Sr. Manuel Elias, en el expediente sobre el denuncia que éste como copropietario ha presentado de las demasias del rancho de “San Pedro,” sito en el Distrito de Magdalena, según mejor proceda en derecho y respetuosamente ante Ud. digo: Que conviniendo á mi representado probar la posesión á que se refiere los artículos 5^o y 6^o de la ley de 22 de Julio de mil ochocientos (ochenta) sesenta y tres, sobre la ocupación y enagenación de terrenos baldios, á fin de que goce de los beneficios que los mismos conceden, suplico á Ud. se sirva decretar la siguiente averiguación, mandando al efecto que con citación del Sr. Promotor Fiscal, declaren bajo formal protesta legal, y conforme al siguiente interrogatorio los ciudadanos Florencio Dominguez, José Maria Montoya, padres Florencio Ruiz, Juan Pablo Montiel y José Maria Michelena. Como las personas que acabo de nombrar tienen sus domicilios en Santa Cruz, pueblo del expresado Distrito, ruego á Ud. así mismo tenga á bien disponer se libre la requisitoria que corresponde al Juez local de dicho pueblo, á fin de que esta autoridad practique la susodicha información, recomendándole la remita al Juzgado del

digno cargo de Ud. para que agregada con oportunidad al expediente de que hago mérito surta sus efectos legales. Por tanto, á Ud suplico y pido se sirva proveer de conformidad con lo que deje manifestado, pues así es justicia que protesto en lo necesario. Guaymas, Julio diez de mil ochocientos ochenta y tres. P. Elias.—Lic. Ramon Martinez.—Interrogatorio.—1°. Digan las personas que según el anterior escrito deben declarar, su nombre, edad, domicilio y demas generales de la ley. 2°. Declaren si es cierto dando la razón de su dicho, que mi representado, Señor Manuel Elias, denunciante de las demasias del rancho de "San Pedro," y demas condueños, Señor José Maria Elias, y los herederos del finado Señor José Juan Elias, han estado y estan hace mas de veinte años en quieta y pacífica posesión de todo el terreno que le pertenece á dicho rancho, poseyéndolo sus antepasados desde tiempo inmemorial. 3°. Digan si es verdad, dando la razón de su dicho, que dicho terreno perteneciente al propio "San Pedro" está cultivado, y en él se hallan casas habitadas por el expresado Señor José Maria Elias, y los sirvientes del repetido rancho, encontrándose en el mismo establecida la Aduana de "Palominas." 4°. Declaren, dando la razón de su dicho, si es cierto el rancho de que hablan las anteriores preguntas les pertenecen en propiedad, tanto el denunciante, Señor Elias, como los demas expresados copropietarios, Sr. José Ma. Elias y los herederos del finado José Juan Elias. Fecha ut supra. P. Elias.—Lic. Ramon Martinez. Presentado en su fecha. Conste. Guaymas, Julio once de mil ochocientos ochenta y tres. Original remitase el presente ocurso al Cº Juez de primera Instancia de Magdalena, para que por su conducto se levante la información solicitada ante el Juez local de Santa Cruz, previa citación fiscal. Lo mandé y firmé yo el Juez de Distrito del Estado. Doy fe. Escobar. A.—Leonardo A. Moreno.—José Castellan. En la misma fecha notificado el auto anterior al ciudadano Plutarco Elias y enterado dijo: que lo oye y firma. Doy fe. Escobar. P. Elias. rúbricas. A.—Leonardo A. Moreno. A.—José Castellan. rúbricas. Un sello que dice: Juzgado de 1ª. Instancia de San Ignacio. Recibido el diez y siete del corriente á las nueve de la

441 mañana. Conste. Magdalena, Julio veintitres de mil ochocientos ochenta y tres. Pasa al Juez local de Santa Cruz, para su cumplimiento, y concluida que sea la diligencia que se mandó practicar, remita todo original á este Juzgado. El Juez de 1ª. Instancia del Distrito lo proveyó y firmó. Antonio Padrés. A.—J. A. Chacon. A.—José Maria Díaz. En la fecha se cumplió con el auto inserto. Conste. Juzgado 1º Local de Santa Cruz. Se recibió en este Juzgado el treinta y uno de Julio de mil ochocientos ochenta y tres, á las ocho de la mañana. Conste. Santa Cruz, Julio treinta y uno de mil ochocientos ochenta y tres, hallándose ausentes los C. C. á que se refiere esta requisitoria, cítense para darle su debido cumplimiento. Lo hago constar firmando conmigo los de asistencia. Concepción Elias. A.—Juan de D. Ortega. A.—Macedonio Gonzalez. rúbricas. Agosto siete de mil ochocientos ochenta y tres. Presente el Cº Juan Pablo Montiel y tomada la protesta de estilo para que se condujera con verdad, dijo que si protestaba y siéndolo por sus generales, dijo: llamase como queda dicho, mayor de

sesenta y nueve años, viudo, de oficio labrador y vecino de este pueblo. 1° Preguntado si es ó no pariente de los copropietarios del rancho de San Pedro dijo que no. 2° Preguntado si no tiene intereses directo ó indirecto en el negocio sobre que declara, ó amistad íntima, enemistad con alguno de los condueños del referido rancho, dijo que no. 3° Preguntado que si sabia que los Señores Manuel Elias, José Ma Elias, y los herederos del finado José Juan Elias, han estado y si estan hace mas de veinte años en quieta y pacífica posesión de todo el terreno que pertenece al rancho de San Pedro, sito en el Distrito de Magdalena, y si los mayores, progenitores de dichas personas, tambien poseyeron el propio rancho en toda su extensión, dijo: que hace mas que veinte años conoce por propiedad primero de San Pedro por D. Rafael Elias y José Rafael Elias, y despues conoció por propietarios sus descendientes, que son los Señores Manuel Elias, José Maria Elias y los herederos del finado José Juan Elias, y todo el tiempo que lo poseyeron hasta la fecha, sin violencia y en paz, sin que nadie los inquietara con excepci6n de Apaches; cuya posesi6n puede llamarse inmemorial. 4° Preguntado si sabia quienes posesionaban las casas del rancho de "San Pedro," dijo: que en verdad de su contenido, de vista les consta; que el rancho de San Pedro, cultivado con labores y bienes del Sr. José Ma. Elias, y alli se encuentran las casas de habitaci6n de dicho Sr. y otras casas en que viven sus sirvientes y se encuentra alli tambien la Aduana fronteriza de Palominas. 5° Si podia asegurar que el rancho de "San Pedro" pertenecia á los Señores Elias, dijo: que si aseguraba, porque no hay persona alguna que niegue sean los expresados Señores, Manuel Elias, José Ma. Elias y los herederos del finado José Juan Elias ya finado los dueños del rancho de San Pedro á la vez que todos reconocen desde hace muchos años que dicha propiedad les pertenece á estas personas; y que era toda su declaraci6n en este particular. Lo que hago constar firmando conmigo el declarante, los de mi asistencia y el agente del timbre. Concepci6n Elias. Juan P. Montiel. A.—Juan de Dios Ortega. Macedonio Gonzalez Miguel Siqueiros. En seguida y en la misma fecha se hizo compareces al C° José Maria Michelena, y estando presente fué preguntado si protestaba decir verdad en todo lo que fuere preguntado y siéndolo por sus generales dijo: llamarse como queda dicho, mayor de cincuenta y ocho años, casado, de oficio labrador y vecino de este pueblo en pleno uso de sus derechos; si es ó no pariente de los copropietarios del rancho de "San Pedro" y si no tienen interes

442 directo ó indirecto en el negocio sobre que declara, y si con ninguno de dichos condueños del referido rancho tiene amistad íntima ó ene mistad, dijo: que ninguna cosa de las dos cosas tenia con ellos; si sabia que los Señores Elias, Manuel Elias, José Maria Elias, y los herederos del finado José Juan Elias, han estado y estan hace mas que veinte años en quieta y pacífica posesi6n de todo el terreno que pertenece al rancho de "San Pedro," sito en el Distrito de Magdalena, y si los mayores ó progenitores de dichas personas tambien poseyeron el propio rancho en toda su extensión. Dijo que hace mas de veinte años que conoció por propiedad primero del

ranchito de "San Pedro" al Sr. Rafael Elias y José Rafael Elias, y después sus descendientes, que son los Señores Manuel Elias, José Ma. Elias y los herederos del finado José Juan Elias, y tanto los primeros como los últimos han posesionado dicho terreno, pues allí se encuentran labores cultivadas, casas de habitación del Sr. Dn. José Maria Elias, otras en donde viven sus sirvientes, y la Aduana fronteriza de "Palominas," y todo el tiempo lo poseyeron así mismo, sin violencia y en paz, sin que nadie los inquietara con excepción de los Apaches; cuya posesión puede llamarse inmemorial. Preguntado si sabe si los Señores Manuel Elias, José Maria Elias y los herederos del finado José Juan Elias, son los dueños propietarios del rancho de "San Pedro," dijo que sí, porque no sabe que haya persona alguna que niegue sean los expresados Señores Elias, Manuel Elias, José Maria Elias y herederos del Sr. José Juan Elias ya finado los dueños del rancho de "San Pedro," á la vez que todos reconocen desde hace muchos años que dicha propiedad les pertenece á estas personas; siendo ésta toda mi declaración. Lo que hago constar, firmando conmigo el declarante, los de mi asistencia y agente del Timbre. Concepción Elias. Miguel Siqueiros. M. Michelena. A.—Macedonio Gonzalez. A.—Juan de D. Ortega. (Miguel Siqueiros.) Rúbricas. Santa Cruz, Agosto diez de mil ochocientos ochenta y tres. En esta fecha se hizo comparecer á esta Juzgado al Co. Jesus Dominguez, hermano de Florencio Dominguez, por encontrarse el segundo que debia declarar, en otro lugar; y presente que fué se le preguntó si protestaba decir verdad en lo que se le preguntase, dijo: que si protestaba decir verdad en todo lo que el supiere, y siéndolo por sus generales, dijo: llamarse como queda dicho, mayor de cuarenta y dos años, casado, de oficio labrador y vecino de este pueblo, en uso de sus derechos. Preguntado si era pariente de los copropietarios del rancho de San Pedro y si tiene interes directo ó indirecto sobre el negocio en que declara, ó tiene con alguno de dichos condueños del referido rancho amistad íntima ni enemistad, dijo que ninguna de las dos cosas tenia con dichos Señores. Si sabia que el representado, Señor Manuel Elias, denunciante de las demasías del rancho de "San Pedro," y demas condueños, Señor José Ma. Elias y los herederos del finado José Juan Elias, han estado y estan haciendo mas de veinte años, en quieta y pacífica posesión de todo el terreno que le pertenece á dicho rancho, poseyéndolo sus antepasados desde tiempo inmemorial, dijo: que desde el tiempo que el tuvo uso de razón conoció primero el rancho de San Pedro por propiedad del Sr. Rafael Elias y José Rafael Elias, después por sus descendientes, Manuel Elias, José Ma. Elias y herederos del finado José Juan Elias, y que ésto hace mas de veinte años y que lo han posesionado en quieta y pacífica posesión sin que nadie los haya inquietado con excepción de los bárbaros. Preguntado si sabe que el rancho de San Pedro está cultivado, y en él se hallan casas habitadas por el Sr. Dn. José Maria Elias, y los sirvientes del referido rancho, encontrándose en la misma establecida la Aduana de Palominas, dijo: que es cierto que en el mismo rancho se encuentran las casas de habitación del Sr. Dn. José Ma. Elias y casas de sus sirvientes, y allí existe tambien la Aduana de "Palominas;" á mas tiene algunos labores

actualmente en cultivo y en el resto del terreno se encuentra ganado mayor y menor del Sr. José Maria Elias. Preguntado si sabe ser cierto si el rancho de que se hablan las anteriores preguntas, les pertenece en propiedad, tanto al denunciante, Sr. Manuel Elias, asa como á los demas expresados copropietarios, Sr. José Maria Elias, y los herederos del finado José Juan Elias, dijo que si, es cierto porque no hay persona alguna que niegue sean los expresados Señores, Manuel Elias, José Maria Elias y los herederos del finado José Juan Elias ya finado los dueños del rancho de "San Pedro," á la vez que todos reconocen desde hace muchos años que dicha propiedad les pertenece á estas personas; siendo esta toda mi declaración. Lo que hago constar firmando conmigo el declarante, los de mi asistencia y agente del Timbre. Concepción Elias. Jesus Dominguez. Macedonio Gonzalez. Rúbricas. A.—Juan de D. Ortega. A.—Miguel Siqueiros. Rúbricas. En seguida y en la misma fecha se hizo comparecer al C^o José Maria Montaya, y presente que fué, se le preguntó si protestaba decir verdad en todo lo que el supiere; y siéndolo por sus generales, dijo llamarse como queda dicho, mayor de cincuenta y nueve años, casado, de oficio labrador, vecino de este pueblo. Preguntado si es ó no pariente de los copropietarios del rancho de San Pedro dijo que no. Preguntado si tiene interes directo ó indirecto en el negocio sobre que declara, amistad íntima ó enemistad con alguno de los condueños del referido rancho, dijo que no tenia con dichos Señores ninguna de las dos cosas. Preguntado si sabe que los copropietarios dueños del rancho de "San Pedro," Señor Manuel Elias, denunciante de las demasias de dicho rancho, y demas condueños, José Maria Elias y herederos del finado José Juan Elias, han estado poseyendo ó si lo estan asi mas de veinte años, dijo que hace mas de veinte años que él conoció en dicho rancho al Sr. Rafael Elias y José Rafael Elias, y despues de éstos conoció á sus descendientes, Señores Manuel Elias, José Maria Elias y herederos del finado Sr. Dn. José Juan Elias, y á esta fecha lo ha estado y estan en pacífica posesión de todo el terreno que pertenece al rancho de San Pedro, sito en el Distrito de Magdalena. Preguntado si sabia quienes ocupaban las casas de dicho rancho, dijo que allí se encontraban las que ocupaba el Señor Dn. José Maria Elias, otras en donde viven sus sirvientes de dicho Señor, encontrándose allí tambien la Aduana de Palominas. Preguntado si se encontraban en dicho rancho tierras de cultivo, dijo que á la fecha se encontraban cultivadas algunas labores. Preguntado si todo el tiempo poseyron los Señores referidos dicho rancho de San Pedro sin violencia y en paz, sin que nadie los inquietara, dijo que si, con excepci3n de los Apaches que los molestaban á menudo. Preguntado si es cierto que el rancho de que hablan las anteriores preguntas les pertenece en propiedad, tanto al denunciante, Señor Manuel Elias, como á los demas expresados copropietarios, Señor José Maria Elias, y los herederos del finado José Juan Elias dijo que si, porque no hay persona alguna que niegue que los expresados Señores del rancho de San Pedro, á la vez que todos reconocen desde hace muchos años que dicha propiedad les pertenece á estas personas siendo toda esta mi declaration; todo lo que hago constar firmando conmigo el declarante, los de mi asistencia

y agente del Timbre. Concepción Elias. José Maria Montoya. Macedonio Gozalez. Rúbricas. A.—Juan de D. Ortega. A.—Miguel Siqueiros. Rúbricas. En seguida y en la misma fecha se hizo comparecer al Señor Florencio Ruiz, y estando presente se le tomó la protesta

444 de estilo para que se condujera con verdad, y dijo: que si protestaba y siéndolo por sus generales dijo llamarse como queda dicho, mayor de edad, casado de oficio labrador y vecino de este pueblo. 1° Preguntado si es ó no pariente de los copropietarios del rancho de "San Pedro," dijo que no. 2° Preguntado si no tiene inetres directo ó indirecto en el negocio sobre que declara ó amistad íntima, enemistad con alguno de los condueños del referido rancho, dijo que no. 3° Preguntado que si sabia que los Señores Manuel Elias, José Maria Elias y los herederos del finado José Juan Elias, han estado y estan en quieta y pacífica posesión hace mas de veinte años de todo el terreno que pertenece al rancho de "San Pedro," sito en el Distrito de Magdalena, y si los mayores ó progenitores de dichas personas tambien poseyeron el propio rancho en toda su extensión, dijo que hace mas que veinte años que conoce por propiedad primero de San Pedro á Dn. Rafael Elias y José Rafael Elias; despues conoció como propietarios sus descendientes que son los Señores Manuel Elias, José Maria Elias y los herederos del finado José Juan Elias, y todo el tiempo que lo poseyeron hasta la fecha, sin violencia y en paz, sin que nadie los inquietara con excepción de los Apaches, cuya posesión puede llamarse inmemorial. Preguntado si sabia quienes posesionaban las casas, rancho de San Pedro, dijo que en verdad de su contenido de vista les consta que el rancho de San Pedro está cultivado con labores y bienes del Señor José Maria Elias, y allí se encuentran las casas de habitación de dicho Señor, y otras casas en que viven sussirvientes, encontrándose al mismo tiempo establecida allí la "Auana de Palominas." 5° Preguntado si sabia que el Señor Manuel Elias, denunciante de las demasías del rancho de San Pedro, y demas condueños Señor José Maria Elias y herederos del finado José Juan Elias, eran los legítimos dueños de dicho rancho, dijo que lo sabia, porque no hay persona alguna que niegue sean los expresados dueños Señores Elias, los propietarios dueños del rancho de San Pedro y á la vez todos reconocen desde hace muchos años que dicha propiedad les pertenece á estas personas, quedando concluida con ésto mi declaración. Lo que hago constar firmando conmigo el declarante, los de mi asistencia y agente del Timbre. Concepción Elias. F. Ruiz. Miguel Siqueiros. rúbricas. A.—Juan de D. Ortega. A.—Macedonio Gonzalez. Un timbre de cincuenta centavos debidamente cancelado. Recibido el diez y ocho del corriente á las nueve de la mañana. Conste. Magdalena, Agosto veintiuno de mil ochocientos ochenta y tres. Estando cumplimentada la antecedente requisitoria devuélvase al Juzgado de su origen. El Juez de 1ª. Instancia del Distrito lo proveyó y firmó. Antonio Padrés. A.—J. A. Chacon. A.—José Maria Diaz. En la fecha y en nueve fojas útiles se cumplió con lo mandado. Conste. Guaymas, Marzo veintidos de mil ochocientos ochenta y cuatro. No estando acreditada en estas (expediente) diligencias la personeria del Cº Plutarco Elias á que se refiere su escrito de 14 de Mayo del año

anterior, provéngasele presente el poder respectivo, tómesese de el la correspondiente razón y devuélvasele. Notifíquesele. El C^o Juez 1^o Suplente de Distrito del Estado lo mandó y firmó, con los de asistencia. Doy fe. Rincon. A.—L. A. Moreno. A.—Parrilla. En la misma fecha se notificó el auto anterior al C^o Plutarco Elias y enterado dijo: que lo oye y exhive el poder á que se refiere el auto que se le notifica y firmó. Doy fe. Rincon. P. Elias. A.—L. A. Moreno. A.—P. Parrilla. rúbricas. En la misma fecha doy fe haber visto, leído y devuelto al interesado un poder general otorgado en este Puerto el 13 de Diciembre de 1881, por el C^o Manuel Elias á favor del ciudadano Manuel Aguayo, ante el escribano público C^o Jesus M.

Gaxiola y bastanteado el mismo dia por el C^o Licenciado Ramon

445 Martinez. Dicho poder tiene las estampillas correspondientes debidamente canceladas y contiene todas las cláusulas generales

propias de su especie, y las especiales para interponer los recursos de amparo, súplica, casación y sus denegadas, así como para denunciar terrenos y registrar minas, siguiendo los juicios respectivos por todos sus trámites; facultando expresamente al apoderado para sustituir el poder en todo ó en parte, revocar sustitutos y nombrar otros de nuevo, concediéndose tambien á los sustitutos la facultad de sustituir. Está sustituido el 23 del mismo mes y año á favor del Sr. C^o José A. Marquez, y por éste el C^o Plutarco Elias, el primero de Diciembre de mil ochocientos ochenta y dos, ambas sustituciones fueron suscritas ante el notario público, C^o Licenciado Jesus M. Gaxiola, con la misma amplitud de facultades que dicho instrumento contiene. Lo que asiento por diligencia. Doy fe. Rincon. rúbrica. A.—Leonardo A. Moreno. A.—Parrilla. rúbricas. Guaymas, Agosto veintiocho de mil ochocientos ochenta y tres. Recibida la información, agreguese al expediente respectivo. Lo mando y firmo yo, el Juez de Distrito. Escobar. A.—L. A. Moreno. A. En^o Piña. Un timbre de cincuenta centavos debidamente cancelado. C^o Juez de Distrito. Plutarco Elias, en representación ya acreditada del Sr. Manuel Elias, en el expediente sobre el denuncia que éste, como copropietario, ha presentado de las demasias del rancho de "San Pedro," sito en el Distrito de Magdalena, según proceda mejor en derecho y con el debido respeto, ante Ud. digo: Que agregado á dicho negocio corre la información de testigos que en Julio del año actual promoví ante ese mismo Júzgado, para probar con ella relativamente al referido denuncia denuncia, los requisitos de que tratan los artículos 5^o y 6^o de la ley vigente sobre ocupación y enagenación de terrenos baldios; y como de tal información resulta la probanza á que me contraigo, y que por tanto mi representado es acreedor al beneficio que dichos artículos establecen. A Ud. pido y suplico que teniendo tambien en consideración al efecto la copia certificada que en diez fojas útiles acompaño del título de merced del mencionado rancho, se sirva hacer en mi favor la declaración correspondiente indicada sobre la rebaja del precio que fija la tarifa respectiva, para la enagenación del terreno denunciado, pues así es de justicia, que en lo necesario protesto. Guaymas, Octubre quince de mil ochocientos ochenta y tres. P. Elias. Ostrosi digo: que la justificación de Ud. se ha de servir devolverme la copia

certificada que remito, tomada que sea de ella la razón que corresponde. La misma fecha. P. Elias. rúbrica. Presentada en su fecha. Conste. Guaymas, Octubre quince de mil ochocientos ochenta y tres. Traslado por tres dias al representante fiscal. Lo mando y firmo yo, el Juez de Distrito. Doy fe. Escobar. A.—L. A. Moreno. A.—Em^a Piña. En diez y seis del mismo mes se notificó el auto anterior al C^o Plutarco Elias y enterado dijo: que lo oye y firma. Doy fe. L. A. Moreno. A.—Em^a Piña. Escobar. P. Elias. rúbricas. En la misma fecha se notificó el auto anterior al C^o Jefe de Hacienda en funciones de Promotor fiscal y enterado dijo: que lo oye y recibe el traslado. Esto expuso y firmó. Doy fe. Escobar. Agapito Silva. rúbricas. A.—L. A. Moreno. A.—Em^a Piña. En la misma fecha y en cuarenta y dos fojas útiles se cumplió con lo mandado en el auto anterior. Conste. C^o Juez de Distrito: El Jefe de Hacienda en funciones de Promotor Fiscal dice: Que de las constancias que arroja este expediente aparece fundada la solicitud que hace el C^o P. Elias apoderado del denunciante de las demasias del rancho de San Pedro, situado en el Distrito de Magdalena, C^o Manuel Elias, de que se le considere comprendido en las franquicias que á los poseedores de terrenos baldios que esten cultivados ó acatados con zanja ó mojoneras, conceden
446 los artículos 5^o y 6^o de la ley de veinte de Julio de 1863, varias son las razones que el que suscribe tiene para opinar en el sentido que lo hace, pero basta citar la de que habiéndose probado plenamente que el C^o Manuel Elias ha estado en posesión del citado rancho por mas de veinte años; así es que sobre el mejor parecer de ese Juzgado, creo que pueden concederse los beneficios que otorga la referida ley á los que se encuentran en igual caso que el denunciante. Guaymas, Octubre diez y siete de mil ochocientos ochenta y tres. Agapito Silva. Recibido en la misma fecha. Conste. Guaymas, Octubre diez y nueve de mil ochocientos ochenta y tres. Pase el presente expediente á la Jefatura de Hacienda el Estado para que conforme á la tarifa vigente al tiempo del denuncia practique la liquidación del valor de las demasias del rancho nombrado "San Pedro," denunciadas por el C^o Manuel Elias. Lo mandó y firmó el C^o Juez de Distrito del Estado. Doy fe. Escobar. rúbrica. A.—L. A. Moreno. A.—Em^a Piña. rúbricas. Un timbre de cincuenta centavos debidamente cancelado. En veintidos de Octubre del propio año se notificó el auto anterior al C. Plutarco Elias y enterado, dijo: que lo oye y suplico al Juzgado le devuelva el testimonio del título del terreno como lo solicitó en su escrito de quince del corriente. Escobar. rúbrica. P. Elias, rúbrica. L. A. Moreno. A.—Em^a Piña. rúbricas. Guaymas, Octubre veintitres de mil ochocientos ochenta y tres. Como lo pide, tómesese razón de los títulos á que se refiere el ocursante y devuélvanse. Lo mandé y firmé yo el Juez. Doy fe. Escobar. rúbrica. A.—L. A. Moreno. A.—Em^a Piña. rúbricas. En veinticuatro del propio mes y año, é impuesto del auto anterior el C^o Plutarco Elias, y enterado, dijo: que lo oye y firmó. Doy fe. Escobar. rúbrica. P. Elias. rúbrica. A.—L. A. Moreno. Em^a Piña. rúbricas. En la misma fecha el suscrito Juez de Distrito del Estado de Sonora hace constar: que tiene á la

vista el testimonio del título de merced de cuatro sitios de tierra para eria de ganado mayor expedido por el Ciudadano Tesorero General del Estado en la Ciudad de Arizpe con fecha ocho de Mayo del año de mil ochocientos treinta y tres, José Maria Mendoza, á favor del Ciudadano Rafael Elias y previo pago de doscientos ocho pesos un grano que enteró el expresado Elias en la Caja de dicha Tesoreria por valor de los cuatro sitios, gastos y derechos del título. El terreno es generalmente conocido con el nombre del Rancho de "San Pedro" en jurisdicción del pueblo de Santa Cruz y cerca del Presidio de Fronteras en el Distrito de Magdalena. Lo que asiento por diligencia. Doy fe. Escobar. rúbrica. A.—L. A. Moreno. A.—Em° Piña. rúbricas.

En seguida se devolvió al interesado el testimonio del título en cumplimiento del auto anterior. Conste. rúbrica. En dos de Noviembre del propio año en 33 fojas útiles y plano del terreno, se pasa este expediente a la Jefatura de Hacienda en cumplimiento del auto anterior. Conste. rúbrica. Un sello que dice: "Republica Mexicana, Jefatura de Hacienda en Sonora." Ciudadano Juez de Distrito: No estando declarado por el Juzgado de su cargo que el denunciante de las demasias del rancho de San Pedro esté comprendido en los artículos 5° y 6° de la ley de 20 de Julio de 63, la Jefatura de mi cargo no puede practicar la liquidación según su auto de Octubre 10 sino es en vista de la declaración para hacer la rebaja que previenen dichos artículos. Guaymas, Marzo 21 de 1884. Agapito Silva, rúbrica. Recibido el 22 del mismo mes. Conste. rúbrica. Guaymas, Abril ocho de mil ochocientos ochenta y cuatro. Resultando de las diligencias de este expediente que el Rancho de "San Pedro" pertenece á varios copropietarios, quienes por la ley tienen igual derecho á las demasias denunciadas por el Ciudadano Manuel Elias, hágase saber al representante de éste exprese si está anuente en que dichas demasias se adjudiquen á su poderante en unión del ciudadano José Maria Elias y herederos del finado José Juan Elias y en caso contrario, cítese á éstos para que usen de su derecho ó manifiesten si desisten del que les corresponde en el denuncia y adjudicación de las demasias indicadas. Lo mandó el Juez 1° Suplente de Distrito firmando con los de asistencia. Doy fe. P. del Rincon. rúbrica. A.—L. A. Moreno. A.—Jesus F. Leiva. rúbricas. En diez y siete del mismo Abril presente en este Juzgado el C° Plutarco Elias, se le notificó el auto anterior y enterado dijo: que lo oye y está conforme en que se adjudiquen las demasias denunciadas por su poderdante á todos sus copropietarios que son Don José Ma. Elias, hermano del denunciante, y los herederos de Don José Juan Elias, tambien hermano de dicho denunciante, los cuales son: Don Plutarco Elias, Don Rafael Elias, Don Alejandro Elias, Don Carlos Elias y Don Man'l Elias y Doña Jesus Elias y Doña Dolores Elias. Esto dijo y firmó. Damos fe. Rincon. rúbrica. P. Elias. rúbrica. A.—L. A. Moreno. A.—Jesus F. Leiva. rúbricas. Guaymas, Junio diez y siete de mil ochocientos ochenta y cuatro. En vista de la respuesta anterior y no estando justificado en autos que los denunciantes tengan el terreno acotado en los términos que requiere el artículo 5° de la ley de baldios para obtener la gracia que el

mismo señala, sino solo que tienen título y posesión de mas de diez años, la cual han conservado, vuelvan de nuevo estas diligencias á la Jefatura de Hacienda, para que de conformidad con el artículo 6° de la precitada ley, forme la liquidación de las demasias conforme á la tarifa vigente al tiempo del denuncio. El 1°. Juez Suplente de Distrito lo decretó y firmó por ante los testigos de su asistencia. Damos fe. Rincon. rúbrica. A.—L. A. Moreno. A.—J. Castelan. rúbricas. En veinte del mismo mes se notificó el auto que antecede al ciudadano Plutarco Elias por sí y como apoderado de los demas denunciante, y enterado dijo: que lo oye y estando comprobado en autos no solo la circunstancia de poseer título translativo de dominio, sino posesión y cultivo de los terrenos por mas de diez años, se cree comprendido en las condiciones prevenidas por el artículo 5° de la ley de baldios vigente; por lo que suplica al Juzgado se sirva revocar el auto que se le notifica, ordenando se haga la liquidación con la rebaja de la mitad, y firmó. Doy fe. Rincon. rúbrica. P. Elias. rúbrica. A.—L. A. Moreno. A.—J. Castelan. rúbricas. Guaymas, Junio veintisiete de mil ochocientos ochenta y cuatro. Siendo de la facultad de la Sria. de Fomento, según la ley, aprobar ó no la liquidación que se forme, y vista la inconformidad de la parte con lo resuelto en auto de diez y siete del corriente, como lo solicita, y á reserva de lo que resuelva la expresada Sria. sobre la validez de la información con que se pretende obtener la gracia y cual corresponde, hágase la liquidación conforme al artículo 5° de la ley de 22 de Julio de 1863, pasándose al efecto este expediente á la Jefatura de Hacienda del Estado. El Juez 1° Suplente de Distrito, lo mandó y firmo por ante los testigos de su asistencia. Doy fe. Rincon. rúbrica. A.—L. A. Moreno. A.—J. Castelan. rúbricas. En veintiocho del mismo notificó se le el auto anterior al C° Plutarco Elias, y enterado dijo: que lo oye y firma. Doy fe. Rincon. rúbrica. P. Elias. rúbrica. A.—L. A. Moreno. A.—J. Castelan. rúbricas. En cuatro de Julio del mismo año se pasa este expediente á la Jefatura de Hacienda en 36 fojas útiles y plano respectivo como está mandado. Conste. rúbrica. Liquidacion, que forma esta Jefatura de las demasias denunciadas y mensuradas en el presente expediente:

448 Valor de 21,203 hectaras 47 aras á razón de 6 cent's
hectara de conformidad con lo dispuesto por el
Juzgado de Distrito \$1,272.20

Cuya cantidad debe satisfacerse en la forma siguiente:

Al Erario federal en efectivo.....	\$424.07
" " " " bonos.....	212.03
" " del Estado en efectivo.....	424.07
" " " " " creditos.....	212.03

Igual..... \$1,272.20 \$1,272.20

Guaymas, Noviembre 18 de 1884.—Luis G. Gago. rúbrica. Guaymas, Diciembre treinta y uno de mil ochocientos ochenta y cuatro. Pasen estos autos al representante fiscal en traslado, según

está prevenido por la superioridad. Así lo decretó, mandó y firmó el Juez de Distrito, actuando con testigos de asistencia. Doy fe. J. M. Astiazarán. rúbrica. A.—A. L. Dominguez. A.—F. Santillan. rúbricas. En diez y nueve de Enero de mil ochocientos ochenta y cinco, se notificó el auto anterior al apoderado del interesado y enterado dijo: que lo oye y firma. Astiazarán. rúbrica. José M. Maytorena. rúbrica. A.—A. L. Dominguez. A.—F. Santillan. rúbricas. En la misma fecha y en treinta y seis fojas útiles pasa este expediente al Jefe de Hacienda en funciones de Promotor según está mandado. Conste. rúbrica. Ciudadano Juez de Distrito: El Jefe de Hacienda que suscribe en funciones de Promotor fiscal dice: que examinadas las constancias de estos autos, se ha visto que la última notificación se hizo al Sr. Dn. José Ma. Maytorena cuya personería no aparece justificada pues el último apoderado lo es el Señor Plutarco Elias; en tal virtud, devuelvo el expediente á fin de que la notificación se haga á quien corresponde ó que el Señor Maytorena acredite ser el representante legal. Hecho ésto, se me devolverán los autos para pedir lo que sea conducente. Guaymas, Marzo 24 de 1885. El Jefe de Hacienda, A. Ramos. rúbrica. Guaymas, Marzo veinticuatro de mil ochocientos ochenta y cinco. Hágase saber al C^o Jefe de Hacienda en funciones de Promotor, que es representante legal del C^o Manuel Elias el C^o José Ma. Maytorena, según aparece en el expediente de oposición promovido por el mencionado C^o Maytorena en representación de Elias contra la mensura practicada por el concesionario C^o Plutarco Ornelas; y en el que está tomada razón del poder. Así lo decretó, mandó y firmó el Juez de Distrito actuando con testigos de asistencia. J. M. Astiazarán. rúbrica. A.—J. Castelan. A.—F. Santillan. rúbricas. En la misma fecha notificado el ciudadano José Ma. Maytorena del auto anterior dijo: que lo oye y firma. Astiazarán. rúbrica. José M. Maytorena. rúbrica. A.—J. Castelan. A.—F. Santillan. rúbricas. En veinticinco del mismo y en 37 fojas útiles se pasa este expediente al Jefe de Hacienda en funciones de Promotor fiscal según está mandado. Conste. rúbrica. Un sello que dice: República Mexicana, Jefatura de Hacienda en Sonora. Ciudadano Juez de Distrito: El Jefe de Hacienda en funciones de Promotor fiscal dice: que ha examinado las constancias del presente expediente de denuncia, hecho por el Ciudadano Manuel Elias, de las demasias del rancho denominado "San Pedro," sito en el Distrito de Magdalena, y ha visto que se ha tramitado conforme y arreglado á las prescripciones de la ley de 20 de Julio de 1863; que en tal virtud, y constando de autos que tanto el denunciante, Don Manuel Elias como Dn. José María Elias y los herederos del finado Dn. José Juan Elias, son copropietarios del mencionado rancho, quienes por la ley tienen igual derecho, el que suscribe es de parecer, salvo lo que

449 la Secretaria de Fomento disponga respecto de la liquidación practicada por la Jefatura de Hacienda, del valor del terreno que resultó como demasias, que este Juzgado debe proceder á su adjudicación, en la proporción que cada uno de los mencionados copropietarios corresponda. Guaymas, Marzo 25 de 1885. El Jefe de Hacienda, A. Ramos. rúbrica. Guaymas, Mayo treinta y uno de

mil ochocientos ochenta y seis. Justificado que sea por los denunciantes de las demasias de San Pedro la propiedad que tienen en dicho rancho; así como certificándose que el Edicto se publicó tres veces consecutivas en el periódico oficial del Estado, se procederá á la adjudicación de las demasias de que se trata. Notifíquese. Lo decretó, mandó y firmó el Juez de Distrito. Doy fe. Lic. Monteverde. rúbrica. Ramon Martinez, Srio. rúbrica. En la misma fecha presente el ciudadano José Ma. Maytorena á quien se le notificó el auto anterior y enterado dijo: que con respecto al título de propiedad se ha tomado razón de el á fs. 34 frente y vuelta de los autos: que sobre que los actuales poseedores y propietarios del rancho de San Pedro sean Don Manuel, Don José Maria y los herederos de Don José Juan Elias, pedirán con oportunidad que se reciba la informacion correspondiente: que con relación á los Edictos, existen publicados el 1º en el número 22 de la Constitución correspondiente al 25 de Mayo de 1883; el 2º en el número 23 del mismo periódico publicado el 1º de Junio del mismo año; y el 3º en el número 24 que corresponde al dia 8 del mes y año citados: que de ello pide se dé fe por el Juzgado; y que repite que suplica se haga la adjudicación de las demasias de que se trata por terceras partes: una á Don José Maria Elias; otra á Dn. Manuel Elias; y la tercera á favor de Plutarco, Alejandro, Cárlos, Rafael, Manuel, Maria de Jesus y Maria de los Dolores Elias. Esto dijo y firmó. Lic. Monteverde. rúbrica. José M. Maytorena. rúbrica. Ramon Martinez. Srio. rúbrica. Junio 1º de 1886. El suscrito Juez hace constar haber visto publicado en los números 22, 23 y 24 del periodico, "La Constitucion," correspondientes á los dias veinticinco de Mayo, primero y ocho de Junio del año de mil ochocientos ochenta y tres, el edicto cuya publicación se decretó en auto de Mayo veintiuno del referido año de mil ochocientos ochenta y tres: no agregándose ningun ejemplar del mencionado periódico por no venir mas que un número para la colección. Lo que se asienta por diligencia. Doy fe. Lic. Monteverde. rúbrica. Ramon Martinez. Srio. rúbrica. Guaymas, Junio veintidos de mil ochocientos ochenta y seis. Visto el presente expediente de denuncia que de las demasias del rancho llamado San Pedro, hizo el ciudadano Manuel Elias, como condueño de dicha finca; Vista la ejecutoria del Tribunal de Circuito, fecha veintitres de Mayo de Mil ochocientos ochenta y dos, y que se encuentra á fojas 11 y 12 vuelta, y en la que se resuelve que se revoca el auto de este Juzgado de fecha veintiuno de Julio de mil ochocientos ochenta y uno, que declaró desierto este denuncia; y en virtud de lo cual se continuó la tramitación de este denuncia; Vistas las diligencias de mensura y plano practicadas ambas cosas por el agrimensor Pedro B. Molera, apareciendo una área total de 28,265 11 hectaras de las cuales 7,061.64 hectaras estan cubiertas con el título y 21,203.47 Hs. son demasias; Visto el informe de la Jefatura de Hacienda, y en el que manifestó que careciendo de datos ignoraba si la Hacienda pública se encontraba ó no en posesión de las demasias que se denunciaban, por cuyo motivo, de conformidad con el artículo 17 de la ley de 22 de Julio de 1863, se mandó publicar por medio de edictos en el periódico

oficial del Estado, y habiendo trascurrido con exceso el término que se fijó nadie se ha presentado; Vistas las constancias que
 450 se hallan á foja 34 vuelta y en la que se tomó razón por este Juzgado de un testimonio del título de merced de cuatro sitios de tierra para cria de ganado mayor, expedido por el ciudadano Tesorero General del Estado, en la Ciudad de Arizpe á los ocho dias del mes de Mayo del año de mil ochocientos treinta y tres, á favor del ciudadano Rafael Elias. El terreno es conocido generalmente por el rancho de San Pedro, y se halla en jurisdicción del pueblo de Santa Cruz y cerca del Presidio de Fronteras. Vistas las constancias que se encuentran de la foja cuarenta y una á la cuarenta y tres y en la que aparece una información pedida por el apoderado del C^o Manuel Elias, á fin de comprobar que el referido ciudadano, así como su hermano, José Maria y José Juan Elias, representado éste último en la actualidad por sus herederos, Plutarco, Rafael, Alejandro, Carlos, Manuel, Maria de Jesus y Maria de los Dolores Elias, son los herederos del Señor José Rafael Elias ya difunto. Vistas las demas constancias de este expediente y con fundamento de los artículos 17 y 18 de la mencionada ley de 22 de Julio de 1863, este Juzgado decreta: 1^o Se adjudica en posesión y sin perjuicio de tercero que mejor derecho represente á los C. C. José Maria, Manuel y á los herederos de Don José Juan Elias por terceras partes las 21,203.47 hectaras que resultaron de demasias en la remediada del rancho llamado San Pedro. 2^o La presente adjudicación no surtirá efecto alguno, ni se pondrá en posesión del terreno á los interesados, sino mediante la aprobación de la Secretaria de Fomento, á quien por conducto del Gobierno del Estado se le remitirá testimonio de este expediente y copia del plano respectivo. 3^o No se hará entrega de los títulos á los interesados sino despues que hayan justificado haber satisfecho su valor en la oficina de hacienda respectiva, así como el de las estampillas, tanto de la renta interior como de las de documentos y libros. Así lo decretó, mandó y firmó el Juez de Distrito. Doy fe. Lic. José Monteverde. rúbrica. Ramon Martinez. Srio. rúbrica. En la misma fecha, notificado del anterior auto el ciudadano José Maria Maytorena, dijo; que lo oye y firma. Doy fe. Ramon Martinez. Srio. rúbrica. José M. Maytorena. rúbrica. En ocho de Noviembre se remite copia de este expediente á la Secretaria de Fomento por conducto del Gobierno del Estado. Conste. Martinez. Srio. rúbrica. Una estampilla de cincuenta centavos debidamente cancelada. C^o Juez de Distrito: José Maria Maytorena, apoderado de Don Manuel Elias, en los autos del denuncia de las demasias del rancho denominado "San Pedro," en el Distrito de Arizpe, ante Ud. respetuosamente y en la forma que mejor proceda paso á exponer: que con el fin de cumplimentar el último auto que se me notificó, á Ud. pido se sirva examinar bajo protesta legal á los testigos que presentaré el dia y hora que se me señalen, al tenor del siguiente interrogatorio: Primero: Digan sus generales. Segundo: Digan si conocieron al Señor José Rafael Elias ya difunto. Tercero: Digan si es cierto y les consta que del referido Don José Rafael Elias no quedaron mas herederos que sus hijos, José Maria, Manuel y José Juan Elias. Cuarto: Digan si es cierto

y les consta que el rancho de "San Pedro," situado en el Distrito de Arizpe, y de que era propietario y poseedor Don José Rafael Elias, pasó en posesión y propiedad á Dn. Manuel, á Dn. José Maria y á Dn. José Juan Elias representando en la actualidad á este último sus herederos, Plutarco, Rafael, Alejandro, Carlos, Manuel, Maria de Jesus y Maria de los Dolores Elias. Quinto: Den la razon de su dicho. Siendo de justicia, al Juzgado pido se sirva proveer de conformidad. Protesto lo necesario. Guaymas, Junio nueve de mil ochocientos ochenta y seis. José M. Maytorena. rúbrica. Recibido el quince del mes de su fecha, á las diez de la mañana. Conste. Martinez. Srio. rúbrica.

451 Guaymas, Junio quince de mil ochocientos ochenta y seis. Practíquese la información que se solicita y fecho que sea agreguese al expediente respectivo. El Juez de Distrito lo decretó y firmó. Doy fe. Lic. Monteverde. rúbrica. Ramon Martinez. Srio. rúbrica. En la misma fecha, notificado del anterior auto el ciudadano José Maria Maytorena dijo: que lo oye y firma. Doy fe. Ramon Martinez. Srio. rúbrica. José M. Maytorena. rúbrica. En diez y seis del mismo, notificado del anterior auto el Señor Promotor Fiscal, dijo—que lo oye y firma. Doy fe. Robles. rúbrica. Ramon Martinez. Srio. rúbrica. En la misma fecha, presente en este Juzgado el C^o Librado Yrigoyen, testigo presentado por el C^o José Maria Maytorena, y previa protesta que prestó ante el Promotor Fiscal, para producirse con verdad en cuanto supiere y fuere preguntado lo fué por sus generales y dijo: llamarse como queda dicho, casado, mayor de cincuenta años, natural de la villa de Arizpe y vecino de este Puerto. Preguntado sobre el segundo punto del interrogatorio que se le leyó, dijo: que conoció perfectamente al Señor José Rafael Elias. Preguntado respecto al tercero dijo: que es cierto y le constan que del finado Don José Rafael Elias no quedaron mas herederos que sus hijos José Maria, Manuel y José Juan Elias, representando á este último por haber ya fallecido, sus hijos y herederos, Plutarco, Rafael, Alejandro, Carlos, Manuel, Maria de Jesus y Maria de los Dolores Elias. Preguntado sobre el cuarto, dijo: que si le consta. Preguntado sobre el quinto punto, dijo: que lo que antes ha declarado le consta por haber conocido perfectamente á los Señores José Rafael Elias y José Juan Elias; que lo dicho es la verdad en lo que se afirma y ratifica firmando con el Juez, Promotor y Secretario que da fe. Doy fe. Lic. Monteverde. rúbrica. Librado Yrigoyen. rúbrica. Antonio Robles. rúbrica. Ramon Martinez. Srio. rúbrica. En diez y siete del mismo presente en este Juzgado el C^o Manuel Bustamante, testigo presentado por el C^o José Maria Maytorena, quien previa protesta que hizo ante el Señor Promotor Fiscal para producirse con verdad en cuanto supiere y fuere preguntado, lo fué por sus generales y dijo: llamarse como queda expresado, mayor de cincuenta y cinco años, viudo, natural y vecino de este puerto, y de profesión empleado. Preguntado sobre el segundo punto del interrogatorio que se le presenta, dijo: que si lo conoció. Preguntado sobre el tercero, dijo: que si le consta. Preguntado sobre el cuarto, dijo: que si sabe y le consta y Preguntado sobre el quinto, dijo: que le consta por haberlo ligado relaciones

de amistad con Dn. José Rafael Elias y Dn. José Juan Elias y por haberlo oído, por ser público y notorio. Que lo dicho es la verdad en lo cual se afirma y ratifica, firmando con el Juez, Promotor y Secretario que da fe. Lic. Monteverde. rúbrica. M. Bustamante. rúbrica. Ramon Martinez. Srio. rúbrica. En diez y ocho del mismo presente en este Juzgado el C° Juan Moreno, quien previa protesta que hizo en presencia del Promotor y ante el suscrito Juez, para producirse con verdad en cuanto supiere y fuere preguntado, lo fué por sus generales y dijo: llamarse como queda dicho, de cincuenta años de edad, casado, natural del pueblo de Baviácora, de profesión zapatero y actualmente empleado como cabo en la policia de este puerto. Preguntado por el segundo punto del interrogatorio que antecede y el cual se le leyó, dijo: que si lo conoció. Preguntado respecto del tercero, dijo: que si le consta. Preguntado: respecto al cuarto, dijo: que si sabe y le consta. Preguntado sobre el quinto, dijo: que lo sabe y le consta por ser paisano de los Elias y haber tenido amistad con su Sra. madre, tanto Dn. Rafael como Dn. José Juan Elias, á quienes el declarante conoció perfectamente bien. Que no sabe mas en este respecto; que lo declarado

452 es la verdad, en lo cual se afirma y ratifica, firmando para constancia con el Juez, Promotor Fiscal y Secretario que da fe. Lic. Monteverde. rúbrica. Juan Moreno. rúbrica. Ramon Martinez. Srio. rúbrica. Guaymas, Junio diez y ocho de mil ochocientos ochenta y seis. Justificada por la anterior información que los herederos de Dn. José Rafael Elias son Dn. José Maria Elias, Dn. Manuel, y Dn. Jose Juan Elias, representado este último por sus herederos, Plutarco, Rafael, Alejandro, Cárlos, Manuel, Maria de Jesus y Maria de los Dolores Elias, teniendo por tanto derecho á las demasias del rancho de San Pedro denunciadas por Dn. Manuel Elias como copropietario de dicha finca, teniendo presente esta circunstancia al decretarse la adjudicación, para cuyo fin se agregará esta información al expediente de denuncia. Así lo decretó, mandó y firmó el Juez de Distrito. Doy fe. Lic. Monteverde. rúbrica. Ramon Martinez. Srio. rúbrica. En la misma fecha notificado del anterior auto el apoderado de los interesados, dijo: que lo oye y firma. Doy fe. José M. Maytorena. rúbrica. Ramon Martinez. Srio. rúbrica. Un sello que dice: " Republica Mexicana, Gobierno Del Estado Libre Y Soberano De Sonora." Se recibió en este Gobierno con el oficio de Ud. fecha 8 del mes que cursa el testimonio del expediente de denuncia de las demasias del rancho San Pedro, sito en la municipalidad del pueblo de Sta. Cruz del Distrito de Magdalena, hecho por el C° Manuel Elias, como propietario de dicha finca; teniendo el honor de decir á Ud. en respuesta, que con esta fecha se remite dicho expediente á la Secretaria de Fomento para su superior resolución. Libertad y Constitución. Hermosillo, Noviembre 18 de 1886. Luis E. Torres. Ramon Corral. Srio. rúbrica. Al Juez de Distrito del Estado. Guaymas. Un sello que dice: Secretaria De Fomento, Colonizacion, Industria y Comercio. Mexico. Al márgen. Seccion 1°. Departamento De Terrenos Baldios. Núm. 3454. una rúbrica. En 9 de Fbro. '87 se transcribió esta comunicación al agrimensor C° Pedro B. Molera á Magda. Examinado

en esta Secretaria el testimonio del expediente instruido en ese Juzgado de Distrito con motivo del denuncia hecho por el ciudadano Manuel Elias de las demasias del rancho de San Pedro, sito en jurisdicción del pueblo de Santa Cruz del Distrito de Magdalena de ese Estado, se ha visto que el agrimensor sufrió un error en el cálculo de la superficie pues verificando ésta con los mismos datos de las diligencias, se ve que la area total del terreno es de 28,253 hectaras, 73 aras, 44 centiaras, y no 28,265 hectaras, 11 aras, que dicho perito obtuvo; por cabida legal resultan 7,061 hectaras, 64 aras, 59 centiaras, y no solamente 7,061 hectaras, 64 aras; y por consiguiente, las demasias que se obtienen son 21,192 hectaras, 08 aras, 85 centiaras y no las 21,203 hectaras, 47 aras que asignó el agrimensor. Ademas es de notar que los cuatro sitios de ganado mayor que ampara el título producen en la conversión de la medida métrica decimal 7,022 hectaras, 44 aras y no 7,061 hectaras, 64 aras que el perito deslindó; de donde resulta que se han dado á los adjudicatarios 39 aras 20 centiaras mas de lo que legalmente corresponde por el referido título con perjuicio y pérdida de dicha extensión para la Hacienda pública. En vista, pues, de tales errores, el Presidente de la República, á quien se dió cuenta del asunto, ha tenido á bien acordar se diga á Ud: que se sirva ordenar al Agrimensor repita la mensura, marcando y deslindando en el terreno la legal extensión de 7,022 hectaras, 44 aras, que es la que ampara el título, rectificando á la vez sus cálculos sobre la superficie, á fin de que se obtenga con la exactitud debida lo que se ha de adjudicar por demasias, y que hecho ésto, por lo que legalmente resulte adjudicable, ese Juzgado y la Jefatura de Hacienda reformen el fallo de adjudicación y la liquidación del valor del terreno.

Libertad y Constitución. México, Diciembre 28, de 1886. P. o. d. S., M. Fernandez. rúbrica. O. M. Al Juez de Distrito del Estado de Sonora. Guaymas." Una estampilla de cincuenta centavos debidamente cancelada. En virtud de la comunicacion de ese Juzgado fha. 9 de Febrero del corriente año en la que me trascribe la de la Secretaria de Fomento, comunicacion n° 3454 jirada por la seccion 1ª con fha. 28 de Diciembre del año ppdo: con el fin de que se subsane el error padecido en el cálculo de la superficie, como tambien la de la conversión del sistema antiguo al del sistema métrico decimal, para obtener con la exactitud debida lo que se ha de adjudicar por demasias según los cuatro sitios que ampara el título; he revisado el libro de registros, los borradores del expediente, y planos encontrando que el error de la superficie total tal vez fué una equivocación de pluma y el de la cabida legal la diferencia provino de la reduccion de varas á metros al formar dicho expediente; y cumpliendo con lo prevenido por el Señor Presidente de la República conforme tuvo á bien ordenar en la nota de observaciones, paso á describir el terreno del rancho "San Pedro" subsanados los defectos del anterior expediente que debe ser como sigue: Tomando los rumbos magnéticos, declinación 12° 23' E. partiendo de un punto en un bajío al Norte del de las Nutrias Norte 10,109.78 metros hasta llegar á un punto en donde hay un monton grande en la linea limítrofe. De aquí N. 78° 14' E., 23,225 metros hasta llegar á un

punto en una mesa grande, frente á la sierra de San José. De aquí Sud 14,725 metros cruzando la sierra de San José hasta un bajío por donde pasa una vereda que va de San Pedro al Leoncito. De aquí Oeste 22,753. 36 metros hasta el punto de partida, cuya superficie es de 28,253 hectaras, 73 aras, 44 centiaras. Y la descripción de la cabida legal siendo la que ampara el título la de cuatro sitios de ganado mayor, debe ser como sigue: Tomando los rumbos magnéticos, declinación $12^{\circ} 23'$ E., partiendo de un punto en donde hay dos mojones en la cumbre de unas lomas bajas, lado Este del valle de San Pedro, que al N. 4° O., 2,550 metros se encuentran las casas del rancho y Aduana fronteriza, Este 4,190 metros hasta llegar al pié de unas lomas bajas. De aquí N. 8,380 metros hasta llegar á una mesa chamizosa. De aquí Oeste 8,380 metros hasta llegar al lado Norte de un arroyo seco. De aquí Sud 8,380 metros hasta llegar al extremo de una mesa, lado Oeste del valle de San Pedro. De aquí Este 4,190 metros hasta el punto de partida, cuya superficie es de 7,022 hectaras, 44 aras, que deducidas de la superficie total de 28,253 hectaras, 73 aras, 44 centiaras, resulta una demasia de 21,231 hectaras, 29 aras, 44 centiaras. Por lo tanto, rectificandos los errores de los cuales dió cuenta al Señor Presidente de la República, suplico á Ud, Señor Juez, se sirva unir el presente al expediente respectivo y pueda surtir los efectos convenientes. Campo de las operaciones en la Hacienda de San Pedro á diez y nueve de Marzo de mil ochocientos ochenta y siete. Pedro B. Molera. rúbrica. Al márgen. Abl 29 /87. En esta fecha se mandó copia testimoniada y plano á la Sria. de Fomento. una rúbrica. Guaymas, Abril veinte de mil ochocientos ochenta y siete. Habiendo subsanado el Agrimensor Molera los errores en que incurrió en las diligencias de remedida de San Pedro, pase de nuevo este expediente á la Jefatura de Hacienda para que forme nueva liquidación del valor del terreno denunciado y que han resultado como demasias 21,231 hectaras, 29 aras, 44 centiaras, veintium mil doscientas treinta y una hectaras, 454 veintinueve aras, cuarenta y cuatro centiaras. El Juez de Distrito lo decretó y firmó. Doy fe. Lic. Monteverde. rúbrica. Ramon Martinez. Srio. rúbrica. En la misma fecha se cumplió con lo mandado. Conste. Martinez. Srio. rúbrica. Liquidacion Reformada que practica esta Jefatura del valor de las demasias denunciadas y mensuradas en el presente expediente:

Valor de 21,231 hectaras, 29 aras, 44 centiaras, á 6 centavos hectara, de conformidad con lo dispuesto por el Juzgado de Distrito..... \$1,273.88

El pago debe hacerse en esta forma:

Al Erario federal en efectivo	\$424.62	
" " " " bonos.....	212.32	
" " del Estado en efectivo.....	424.62	
" " " " " certificados	212.32	
	<hr/>	
	81,273.88	81,273.88

Guaymas, Mayo 24 de 1887. El Jefe de Hacienda, Conrado Chavero. rúbrica. Un sello que dice: Republica Mexicana, Jefatura de Hacienda en Sonora. Guaymas, Mayo veinticinco de mil ochocientos ochenta y siete. Subsanados como estan por el agrimensor Molera los defectos que se notaron por la Secretaria de Fomento respecto á las diligencias de la remedida del rancho de San Pedro y practicada por la Jefatura de Hacienda la respectiva liquidación del valor del terreno denunciado, este Juzgado ha tenido que reformar el decreto de adjudicación de veintidos de Junio de mil ochocientos ochenta y dos en los términos siguientes: 1° Se adjudica en posesión y sin perjuicio de tercero á los C. C. José Ma., Manuel, y herederos de Dn. José Juan Elias por terceras partes las veintiun mil doscientas treinta y una hectaras, veintinueve aras, y cuarenta y cuatro centiaras que resultaron de demasias en la remedida del rancho llamado San Pedro. 2° Sáquese copia autorizada de ésto ultimamente practicado y remítase á la Secretaria de Fomento para lo que á bien tenga disponer. El Juez de Distrito así lo decretó y firmó. Doy fe. Lic. José Monteverde. rúbrica. Ramon Martinez. Srio. rúbrica. En la misma fecha, presente el apoderado del interesado é impuesto del auto anterior, dijo: que lo oye y firma. Doy fe. José M. Maytorena. rúbrica. Ramon Martinez. Srio. rúbrica. En la misma fecha se cumplió con lo mandado. Conste. Martinez. Srio. rúbrica. Guaymas Junio siete de mil ochocientos ochenta y siete. Agréguese á este expediente la comunicación de la Secretaria de Fomento de fecha último del mes próximo pasado y désele conocimiento de su contenido al apoderado del interesado. El Juez de Distrito lo decretó y firmó. Doy fe. Lic. Monteverde. rúbrica. Ramon Martinez. Srio. rúbrica. Guaymas, Setiembre dos de mil ochocientos ochenta y siete. Vuelva este expediente á la Jefatura de Hacienda para que reforme la liquidación del valor de las demasias denunciadas, según lo que aparece de lo ultimamente practicado, por órden de la Secretaria de Fomento. El Juez de Distrito lo decretó y firmó. Doy fe. Lic. Monteverde. rúbrica. Ramon Martinez. Srio. rúbrica. En la misma fecha se cumplió con lo mandado. Conste. Martinez. Srio. rúbrica. Un sello que dice: "Republica Mexicana, Jefatura de Hacienda en Sonora." Liquidacion reformada que practica esta Jefatura del valor del terreno denunciado y mensurado en este expediente:

Valor de 15,037 hectaras, 67 aras, 8 centiaras á 6 centavos
hectara..... \$902.26

El pago debe hacerse en esta forma:

Al Erario Federal en efectivo	\$300.75	
" " " " bonos	150.38	
Al Erario del Estado en efectivo	300.75	
455 Al Erario del Estado en certificados.....	150.38	
	<hr/>	
	\$902.26	\$902.26

Guaymas, Setiembre 5 de 1887. El Jefe de Hacienda, Conrado Chavero. rúbrica. Una estampilla de cincuenta centavos debidamente cancelada. C^o Juez de Distrito: José Ma. Maytorena, apoderado general sustituto del Señor Manuel Elias, segun lo tengo ya acreditado, ante Ud. con el debido respecto y como mejor proceda en derecho me presento y expongo; que conviniendo á los intereses que represento se me expida por el Juzgado que es á su cargo una copia certificada del decreto de adjudicación de las demasias del rancho de San Pedro situado en el Distrito de Arizpe hecho á favor de mi representado y demas copropietarios, con arreglo á lo dispuesto por la Secretaria de Fomento en su comunicación relativamente á observaciones al expediente de denuncia de las demasias de dicho rancho. Por tanto: A Ud. pido y suplico se sirva proveer de conformidad, por ser asi de justicia, que protesto con lo necesario. Guaymas, Mayo veinticuatro de mil ochocientos ochenta y siete. José Ma. Maytorena. rúbrica. Recibido en su fecha á las tres de la tarde. Conste. Martinez. Srio. rúbrica. Guaymas, Mayo, veinticinco de mil ochocientos ochenta y siete. Como se solicita extiéndase copia autorizada de los antecedentes que existen en el expediente de denuncia de las demasias de San Pedro y que ultimamente se han practicado á consecuencia de la nota de observaciones de la Secretaria de Fomento de veintiocho de Diciembre del año próximo pasado. El Juez de Distrito lo decretó y firmó. Doy fe. Lic. Monteverde. rúbrica. Ramon Martinez. Srio. rúbrica. En la misma fecha se notificó el auto anterior al apoderado del interesado y enterado, dijo: que lo oye y firmó. Doy fe. José M. Maytorena. rúbrica. Ramon Martinez. Srio. rúbrica. En la misma fecha se expidió la copia que se solicita. Conste. Martinez. Srio. rúbrica. Guaymas, Setiembre cinco de mil ochocientos ochenta y siete. De conformidad con lo dispuesto por la Secretaria de Fomento en su comunicación N^o 1757 de fecha veinte de Junio del presente año, se reforma el auto de adjudicación pronunciada por este Juzgado el veintidos de Junio del año próximo pasado en los términos siguientes: 1^o Se adjudica en posesión y sin perjuicio de tercero que mejor derecho represente á los C. C. José Maria, Manuel y herederos de José Juan todos Elias, 15,037 hectaras, sesenta y siete aras, 08 centiaras, quince mil, treinta y siete hectaras, sesenta y siete aras, ocho centiaras, como demasias del rancho de San Pedro, sito en el Distrito de Arizpe, repartibles por terceras partes para cada uno de los denunciantes. 2^o Remítase á la Secretaria de Fomento copia autorizada de todo lo nuevamente practicado y plano respectivo. El Juez de Distrito lo decretó y firmó. Doy fe. Lic. José Monteverde. rúbrica. Ramon Martinez. Srio. rúbrica. En la misma fecha se notificó el auto anterior al apoderado de los interesados y enterado, dijo: que lo oye y firmó. Doy fe. José M. Maytorena. rúbrica. Ramon Martinez. Srio. rúbrica. En esta fecha, Dbre 12 de 1890, se expidió copia autorizada á los interesados de todas estas diligencias. Conste. rúbrica. Un sello que dice: "Secretaria de Fomento, Colonizacion, Industria y Comercio, Mexico." Sección 1^a. N^o 3755. Examinado en esta Secretaria el expediente instruido en ese Juzgado de Distrito, con motivo del denuncia hecho por el C. Manuel

Elias, de las llamadas demasias del rancho de San Pedro, se ha visto que al hacer la remedida del rancho no se encontraron mojoneras que determinaran los límites ó linderos del mencionado rancho. Según lo expresa el ingeniero que hizo la remedida, principió sus operaciones partiendo de un punto que estimó conveniente, pero sin que pueda asegurarse que ese punto fué el que sirvió de partida al ingeniero que hizo la mensura primitiva, y hay poderosas razones para creer que cada uno de los ingenieros partió de diferente punto. Fijando la atención en el acta de mensura primitiva, se viene en conocimiento de que los rumbos indicados en ella son tan confusos, que al procurar seguirlos se va y vuelve repetidas veces sobre una misma línea sin que sea posible circunscribir con esos datos perímetro alguno. Sentados estos precedentes se deduce lógicamente. Primero: Que el rancho de San Pedro no tiene linderos conocidos ni pueden determinarse y por consiguiente que ese rancho no tiene demasias, pues la existencia de éstas implica necesariamente la existencia de los linderos; así es que el terreno denunciado no puede considerarse como demasia sino propiamente como terreno baldío. Segundo: Que el ingeniero, Pedro B. Molera, hizo una mensura arbitraria, pues partió del punto que eligió sin mas razón que su voluntad, midió la superficie de terreno que fué de su agrado y siguió los rumbos que juzgó convenientes, pues se apartó del único que se señala con precisión en el acta de la primitiva mensura. Por las razones expuestas el Presidente de la República á quien se dió cuenta del asunto, ha tenido á bien acordar: Primero: No se aprueba la adjudicación que del terreno impropriamente llamado demasias del rancho de San Pedro, decretó ese Juzgado de Distrito con fecha veintidos de Junio de mil ochocientos ochenta y seis, en favor del C. Manuel Elias y socios. Segundo: Dése aviso á la Jefatura de Hacienda del Estado de Sonora, para que registre el mencionado terreno y entre en posesión de él la Hacienda pública, con excepción de la parte que del referido terreno se enagenó á los Señores Macmanus é hijos y cuyo respectivo título ya se expidió. Libertad y Constitución. México, Mayo 31 de 1887. P. o. d. S., M. Fernandez, O. M. rúbrica. Al Juez de Distrito del Estado de Sonora. Guaymas. Un sello que dice: "Secretaria de Fomento, Colonizacion, Industria y Comercio. Mexico. Seccion 1ª. Departamento de Terrenos baldios. N° 1757. Con esta fecha digo al C° José Maria Elias lo siguiente: "En vista del expediente sobre denuncia de las demasias del rancho denominado "San Pedro," sito en jurisdicción del pueblo de Santa Cruz del Distrito de Magdalena del Estado de Sonora, y en vista de que en las operaciones de mensura de esas demasias ha sido incluida una porción de los terrenos titulados á los C. C. Francisco Macmanus é hijos, el Presidente de la República se ha servido acordar: que en consideraciones á las razones expuestas por Ud. á nombre de su hermano, C. Manuel Elias, y socios, relativamente á la posesión y demas circunstancias que favorecen su denuncia, y á que por un principio de equidad es de atenderse á ese propio denuncia en la parte que no afecte derechos de un tercero, se revoque, como desde luego queda revocada, la resolución de 31 de Mayo próximo pasado que negaba

de una manera absoluta á dicho C^o Manuel Elias y socios la pretendida adjudicación de los indicados baldíos; pero que esta adjudicación debe circunscribirse á la extensión que deducida la que les corresponde á los C. C. Macmanus é hijos, resulte libre para ser enagenada, y que en consecuencia, con la intervención del respectivo Juez de Distrito, á quien ya se le da conocimiento de este acuerdo, se practique en el terreno y en el plano la segregación de la referida porción Macmanus; precisando con exactitud la superficie que haya de adjudicarse con fundamento de la ley de veintidos de Julio de mil ochocientos sesenta y tres, debiendo marcarse las colindancias, reformarse el fallo judicial por la extensión verdadera y reformarse también la liquidación por la Jefatura de Hacienda, para que una vez concluidas todas estas diligencias sean enviadas por el mismo

Juzgado á esta Secretaria á fin de que aprobadas que sean, se pueda extender el correspondiente título. Lo que comunico á Ud. como resultado de sus gestiones y á efecto de que poniéndolo en conocimiento de sus representados, procedan éstos á la ejecución de las mencionadas diligencias en la parte que les corresponde." Y lo trascribo á Ud. para su inteligencia y con el objeto de que se sirva proceder de conformidad con esta superior resolución. Libertad y Constitución. México, Junio 20 de 1887. P. o. d. S. M. Fernandez, O. M. rúbrica. Al Juez de Distrito del Estado de Sonora. Guaymas. Una estampilla de cincuenta centavos debidamente cancelada. C^o Juez de Distrito: Manuel Elias, por sí y á nombre de mi hermano, José Maria Elias, y socios, comparece ante Ud. para exponer debidamente: Que con fecha veinte de Junio próximo pasado, obtuvimos de la Secretaria de Fomento la resolución siguiente: "Un sello que dice: Secretaria de Fomento, Colonización, Industria y Comercio. México. Sección 1^a. Departamento de Terrenos baldíos. N^o 1756. rúbrica. En vista del expediente sobre denuncia de las demasías del rancho denominado 'San Pedro,' sito en jurisdicción del pueblo de Santa Cruz del Distrito de Magdalena del Estado de Sonora, y en vista de que en las operaciones de mensura de esas demasías ha sido incluida una porción de los terrenos titulados á los C. C. Francisco Macmanus é hijos, el Presidente de la República se ha servido acordar: que en consideración á las razones expuestas por Ud. á nombre de su hermano, C^o Manuel Elias, y socios, relativamente á la posesión y demas circunstancias que favorecen su denuncia, y á que por un principio de equidad es de atenderse á ese propio denuncia en la parte que no afecte derechos de un tercero, se revoque, como desde luego queda revocada la resolución de treinta y uno de Mayo próximo pasado, y que negaba de una manera absoluta á dicho C. Manuel Elias y socios la pretendida adjudicación de los indicados baldíos; pero que esta adjudicación debe circunscribirse á la extensión, que deducida la que les corresponde á los C. C. Macmanus é hijos, resulte libre para ser enagenada, y que en consecuencia, con la intervención del respectivo Juez de Distrito, á quien se le da conocimiento de este acuerdo, se practique en el terreno y en el plano la segregación de la referida porción Macmanus; precisando con exactitud la superficie que haya de adjudicarse con fundamento de la ley de veintidos de Julio de mil

ochocientos sesenta y tres, debiendo marcar las colindencias, reformarse el fallo judicial por la extensión verdadera y reformarse tambien la liquidación por la Jefatura de Hacienda, para que una vez concluidas todas estas diligencias sean enviadas por el mismo Juzgado á esta Secretaria á fin de que, aprobadas que sean, se pueda extender el correspondiente título. Lo que comunico á Ud. como resultado de sus gestiones, y á efecto de que poniéndolo en conocimiento de sus representados procedan éstos á la ejecución de las mencionadas diligencias en la parte que les corresponde. Libertad y Constitución. México, Junio 20 de 1887. P. o. d. Sñ, M. Fernandez, O. M. rúbrica. Al C^o José Maria Elias, Presente." En consecuencia del superior acuerdo que precede y para dar debido cumplimiento á la parte que nos corresponde, hemos de merecer á Ud. que se sirva librar requisitoria al Juez de 1^a Instancia del Distrito de Magdalena, nombrándose si á bien lo tuviere ese Juzgado de agrimensor, al titulado Señor Pedro B. Molera, á fin de que previa su aceptación y protesta, practique las operaciones relativas á rectificar el lindero oeste del terreno que tituló el Presidente de la República á los Señores Francisco Macmanus é hijos, en veinte de Agosto de mil ochocientos ochenta y seis, para que esa linea forme la oriental del rancho de San Pedro, y demas operaciones que previene el citado superior acuerdo; y así pueda fijarse despues en el título que ha de otorgarse á nuestro favor, por las demasias que nos concedió el

458 Gobierno del pais, según se ha visto, procedentes del denuncia presentado el ocho de Julio de mil ochocientos ochenta, cuya tramitación mereció le aprobación del Ministerio de Fomento, en uso de la facultad que le da el art. 18 de la ley de 22 de Julio de 1863. Suplicamos á Ud., al mismo tiempo, que una vez concluidas las diligencias correspondientes á este asunto, se sirva mandar que se compulse testimonio de ellas y del plano ya modificado, mandándolo á la Secretaria de Fomento, con la debida certificación, para los efectos ulteriores. Protesto no proceder de malicia y lo necesario, &c. Guaymas, Julio cuatro de mil ochocientos ochenta y siete. Manuel Elias. rúbrica. Recibido el cuatro de Julio del corriente año. Conste. Martinez, Srio. rúbrica. Guaymas, Julio cuatro de mil ochocientos ochenta y siete. Como se pide se nombra al agrimensor Ciudadano Ignacio Bonillas para que previa su aceptación y protesta que otorgará ante el Ciud^o Juez de 1^a Instancia del Distrito de Magdalena á quien se le remitirá original el presente ocurso, proceda á dar cumplimiento á lo dispuesto por la Secretaria de Fomento y á cuyo objeto se le remitirá copia del plano levantada por el agrimensor Dn. Pedro B. Molera de las demasias del rancho de San Pedro, para que cercene la parte que de ellas se hay titulado á los Señores Macmanus é hijos, los que presenciarn esa operación que se verificará conforme y arreglada á las prescripciones de las leyes de veintidos de Julio y dos de Agosto de mil ochocientos sesenta y tres; y concluida que sea, remitirá original dicho agrimensor todo lo practicada para que obre en el expediente respectivo. El Juez de Distrito de Sonora, así lo proveyó y firmó. Doy fe. Lic. Monteverde. rúbrica. Ramon Martinez, Srio. rúbrica. En la misma fecha se notificó el auto anterior al interesado Ciud^o. Manuel Elias

y enterado, dijo: que lo oye y firmó. Doy fe. Manuel Elias. rúbrica. Ramon Martinez, Srio. rúbrica. En el propio dia se cumplió con lo mandado. Conste. Martinez, Srio. rúbrica. Un sello que dice: "Juzgado de Primera Instancia de Magdalena." Recibida en nueve de Julio de mil ochocientos ochenta y siete con la copia del plano que la acompaña. Conste. A las diez del dia. Conste. rúbrica. Magdalena, Julio nueve de mil ochocientos ochenta y siete. Obséquiese y cúmplase. Lo decretó y firmó el Juez de primera Instancia del Distrito. Adolfo Loustaunau. rúbrica. A.—J. Ma. Diaz. rúbrica. A.—José S. Lopez. rúbrica. En el mismo dia se mandó buscar al agrimensor C°. Ignacio Bonillas, y trajo la razón el portero de este Juzgado, que se hallaba ausente en Nogales. Conste. rúbrica. En once del corriente mes de Julio, en que se logró la comparecencia del agrimensor C°. Ignacio Bonillas, le fué notificado el auto que antecede, el del Juzgado de Distrito del Estado dándosele lectura al ocurso que lo motiva del C. Manuel Elias, y enterado dijo: que lo oye, acepta y protesta cumplir y desempeñar fielmente la comisión que se le confiere y recibe dicho escrito original con lo practicado hasta aquí, juntamente con la copia del plano á que se refiere el Juzgado de Distrito en el auto dictado al calce del mencionado ocurso y firmó. I. Bonillas. Loustaunau. rúbrica. A.—J. Ma. Diaz. A.—José S. Lopez. rúbrica. En la misma fecha, en tres fojas útiles y la copia del plano aludida, fueron entregadas estas diligencias al Señor Ignacio Bonillas, quedando tomada la razón correspondiente en el libro respectivo. Conste. rúbrica. Un sello que dice: "Ignacio Bonillas, Ingeniero de Minas y Agrimensor." En el rancho de San Pedro, á los veintitres dias del mes de Julio de mil ochocientos ochenta y siete. Para cumplimentar el nombramiento que en el auto inserto se haservido conferirme el C° Juez de Distrito del Estado, con fecha de hoy he mandado oficio de citación al Señor James Land, que reside en Palominas, á tres leguas al Norte de este lugar y como á media legua de la linea limitrofe internacional, dentro del territorio de Arizona, y quien, se me ha informado es el representante de los Señores Whitbeck y Robbins, quienes compraron los terrenos titulados á favor de los C. C. Francisco Macmanus é hijos de Chihuahua, para que con los planos de aquellos terrenos, concurra á presenciar las operaciones que se van á practicar según la disposición inserta del Ministerio de Fomento. Es constancia. I. Bonillas. rúbrica. A.—Eduardo Moreno. rúbrica. A.—M. Navarrete. rúbrica. San Pedro, Julio veinticuatro de mil ochocientos ochenta y siete. En esta fecha y en obsequio á mi oficio de citación de ayer ha comparecido el Señor Frank Land, acompañado del Ingeniero Sr. Henry G. Howe. El Señor Land manifestó ser el representante de los Señores Whitbeck y Robbins, añadiendo que no habiendo podido traer consigo los planos y documentos de los terranos que fueron titulados á los Señores Macmanus, por haberlos mandado á Arizpe con el fin de que se inscribieran en el registro público, habia creído propio traer al Señor Howe, quien ayudó al Ingeniero Señor Bergen á mensurar los repetidos terrenos para que me proporcionara todos los datos que necesitara para el cumplimiento de mi comisión. El Señor Howe me

mostró en su libro de apuntes de las operaciones que al hacer aquella medida tomava que: partiendo del monumento internacional, situado en el valle del rio de San Pedro, midieron al Este por el paralelo $31^{\circ} 20'$ de latitud norte cinco mil seiscientos seis metros (5,606 mts) hasta un punto en una mesa, donde erijieron el monumento esquina Noroeste del terreno de los Señores Macmanus. De este monumento, siguiendo por el mismo paralelo, establecieron la esquina Nordeste á diez y nueve mil setecientos metros (19,700 mts) y del mismo monumento, esquina Noroeste, trazaron una perpendicular con el referido paralelo de treinta y un mil ochocientos setenta metros (31,870 mts). Siendo éstos los datos necesarios para la práctica de las operaciones que se me han encomendado, manifesté al Señor Land le daría aviso cuando fuera al campo de las operaciones, para que me acompañara en representación de los actuales dueños de los referidos terrenos titulados á los Señores Macmanus. Lo que anoto para constancia. I. Bonillas. J. M. Land. A.—Eduardo Moreno. rúbrica. A.—M. Navarrete. rúbrica. En la misma fecha, habiendo notado en el plano que se me remitió del Juzgado de Distrito, una equivocación de parte del agrimensor que remedió este terreno de San Pedro, tanto en la observación de la declinación magnética, como en el trazamiento de la limítrofe, pues siendo la declinación de 12° E observada con el aparato solar de un tránsito de Gurley, la marca el agrimensor, Señor Pedro B. Molera, $12^{\circ} 23'$ E y al trazar la línea divisoria internacional, la traza por el rumbo magnético $N 78^{\circ} 14'$ E, cuando claramente se desprende que debió trazarla, según su misma observación de declinación por el $N 77^{\circ} 37'$ E, arrojando un error de $0^{\circ} 37'$ que en una línea de la longitud de que se trata, afectaría muy considerablemente el resultado de la superficie; y tomando tambien en consideración la órden terminante del Ministerio de Fomento de que se precise con toda exactitud tanto en el terreno como en los planos, la porción segregada y la superficie que haya de adjudicarse, he creído conveniente y enteramente compatible con mi deber y carácter oficial, hacer un reconocimiento en toda forma con el fin de averiguar é informar con toda certeza y exactitud sobre los puntos á que he aludido ántes. De consiguiente acompañado de los ayudantes necesarios y de los interesados, Manuel y Carlos Elias, me fuí en el monumento internacional del valle de San Pedro, con el fin de averiguar por una serie de líneas de latitud y longitud el rumbo y distancia del referido monumento al mohon cardinal del Sur de este rancho de San Pedro, que está situado sobre unas lomas bajas al lado oriental del valle y al Sur de las casas del rancho

460 Observando el rumbo verdadera $S 14^{\circ} 52'$ E, declinación 15° E, se midieron por lo plano del valle 360.4 mts. hasta un punto en el mismo valle. De aquí $S 3^{\circ} 02'$ —por el valle, 644 mts. De aquí $S 16^{\circ} 33'$ O por el valle, 1,358 mts. De aquí— $27^{\circ} 53'$ O por el valle 5,701 mts. De aquí— $14^{\circ} 23'$ —por el valle 4,040 mts. De aquí— $17^{\circ} 43'$ E por el valle 2,323 mts. hasta el referido mohon cardinal del Sur de San Pedro, situado como se ha dicho antes. Hechos los cálculos de latitudes y longitudes de las líneas anteriores, y la computación trigonométrica de la hipotenusa del triángulo rectángulo que resulta, se averigua que del monumento internacional

mencionado por el rumbo verdadero S 13° 28' O á 13,839 mts. está situado el mohon del sur de San Pedro. Lo anoto para la debida constancia. I. Bonillas. Carlos Elias. rúbrica. Manuel Elias, rúbrica. José Ma. Elias. rúbrica. A.—Eduardo Moreno. A.—M. Navarrete. rúbrica. Campo de operaciones en San Pedro, á veinticinco de Julio de mil ochocientos ochenta y siete. Con el fin de averiguar si las distancias marcadas en el plano en la linea Sur, han sido medidas con exactitud, del mohon cardinal del Sur se observó el rumbo verdadero S 78° E y se midieron horizontalmente trece mil novecientos sesenta y tres metros, treintiseis centímetros (13,963.36 mts) á cuyo extremo se encontró el mohon esquina Sudeste de este rancho, situado muy inmediato á la vereda que va de las casas del rancho para el Leoncito. Habiendo vuelto al referido mohon del Sur se observó el rumbo opuesto al anterior y se midieron por el valle y mesas planas ocho mil setecientos noventa metros (8,790 mts) que terminaron sobre una loma baja y plana en el mohon esquina Sudoeste del rancho. Suspendidas las operaciones del dia, anoto lo practicado para constancia. I. Bonillas. Carlos Elias. rúbrica. Manuel Elias. rúbrica. José Ma. Elias. rúbrica. A.—Eduardo Moreno. A.—M. Navarrete. rúbricas. Campo de operaciones en San Pedro, á veintiseis de Julio de mil ochocientos ochenta y siete. Del mohon esquina Sudoeste se observó el rumbo verdadero N 12° E y se midieron horizontalmente once mil ochocientos noventa metros (11,890 mts.) que terminaron en la linea divisoria internacional, en un cerro, al pié de un despeñadero y en el punto que se marca con bandera por donde pasa la linea en la vista ó bosquejo N°. 29 del informe rendido por los Comisionados W. H. Emory y Don José Salazar y Larregui, cuyo bosquejo se tomó del monumento del valle de San Pedro, mirando hácia el Oeste por el paralelo 31° 20' de latitud Norte. El cerro referido está en el extremo Sur de la Sierra de Huachuca. Se encontró en el punto de convergencia con la linea límite un monton de piedras que es indudablemente donde se puso una bandera al trazar la linea. Este mohon será la esquina Noroeste de San Pedro. De aqui se observó en el valle de San Pedro el monumento internacional y marcó la brújula la declinación de 12° E y por el referido paralelo 31° 20' se midieron hácia el Este nueve mil trescientos cuarento y nueve metros (9,349) hasta el expresado monumento internacional, situado al Oeste del rio de San Pedro. Terminadas las operaciones del dia anoto lo practicado para constancia. I. Bonillas. Carlos Elias. rúbrica. Manuel Elias. rúbrica. José Ma. Elias. rúbrica. A.—Eduardo Moreno. rúbrica. A.—M. Navarrete. rúbrica. Campo de operaciones en San Pedro á veintisiete de Julio de mil ochocientos ochenta y siete. Habiendo dado aviso oportuno al Sr. Land para que concurriera hoy á presenciar las medidas, he encontrádolo en el monumento internacional donde terminaron ayer las operaciones y de donde observando el rumbo Este astronómico se midieron por el paralelo 31° 20', 680 mts. al rio San Pedro y un total de cinco mil seiscientos seis metros (5,606 mts) al monumento esquina Noroeste de los terrenos adjudicados á los Señores

461 Macmanus. Siguiendo por el mismo paralelo se midieron de este monumeno que sera la esquina Nordeste de San Pedro,

en busca del mohón que ántes era la esquina Nordeste, ocho mil trescientos tres metros (8,303 mts) á cuyo término debió haberse encontrado, pero no hallándolo se estableció un mohón poniendo un poste de pino con un montón de piedras, en una mesa grande. De aquí se observó el rumbo verdadero S 12° O y se midieron horizontalmente 6,390 metros hasta la cima de la Sierra de San José donde ésta comienza á declinar hácia su extremo occidental. Siguiendo por el mismo rumbo se llegó con un total de diez y seis mil setecientos veintiseis metros (16,726 mts) al mohón que antes era la esquina Sudeste de San Pedro, donde se suspendieron las operaciones del día, habiendo dejado mensurado y amohonado el perímetro de lo que ántes era el rancho de San Pedro. Hechos los cálculos correspondientes para averiguar la superficie total resulta ésta ser de 32,555 hectaras, 50 aras y 75 centiaras y no 28, 253 hectaras, 73 aras, 44 centiaras como resulta de la medida del Señor Molera, dejando así confirmadas mis dudas y justificada mi rectificación de medidas. Es constancia. I. Bonillas. Carlos Elias. rúbrica. Manuel Elias. rúbrica. José Ma. Elias. rúbrica. A.—Eduardo Moreno. rúbrica. A.—M. Navarrete. rúbrica. Campo de operaciones en San Pedro á veintiocho de Julio de mil ochocientos ochenta y siete. Habiendo averiguado como se demuestra en las actas anteriores, la superficie total de lo que fué el rancho de San Pedro, voy á proceder á practicar la segregación de la porción perteneciente á los Señores Macmanus ó sus sucesores. Situado en el mohón cardinal del Sur de San Pedro, se observó el rumbo verdadero S 78° E y llevando por visual la cumbre del cerro de las Trincheras se midieron nueve mil veintisiete metros (9,027 mts) que terminaron á orillas de un bajío pequeño donde se puso un mohón de forma piramidal en la convergencia de esta línea con la occidental de los terrenos titulados á los Señores Macmanus. De aquí se observó el Norte verdadero que es el rumbo que me indicó el Señor Howe y se midieron quince mil trescientos treinta y cinco metros que terminaron en el mohón esquina Noroeste de los referidos terrenos Macmanus, y que es ahora la esquina Nordeste de San Pedro. Se deja así segregada, como lo ordena el Ministerio de Fomento, la porción perteneciente á los Señores Macmanus ó sus sucesores que se compone de una superficie de 10,497 hectaras, 39 aras, 67 centiaras, dejando una superficie al rancho de San Pedro de 22,058 hectaras, 11 aras, 8 centiaras, de la que sustrayendo la cabida legal de 7,022 hectaras, 44 aras, queda una excedencia ó demasia de 15,035 hectaras, 67 aras y 8 centiaras. Anoto lo practicado para la debida constancia, firmando de conformidad las partes interesadas. I. Bonillas. Carlos Elias. rúbrica. Manuel Elias. rúbrica. José Ma. Elias. rúbrica. J. M. Land. A.—Eduardo Moreno. rúbrica. A.—M. Navarrete. rúbrica. Magdalena, Agosto quince de mil ochocientos ochenta y siete. En ésta se agrega por duplicado á este expediente el plano de San Pedro, en el que se demuestran las operaciones practicadas, al cumplir con la comisión que se sirvió conferirme el C^o Juez de Distrito. Lo anoto para constancia. I. Bonillas. Un sello que dice: "Secretaria de Fomento, Colonizacion, Industria y Comercio Mexico." Al márgen. Departamento de terrenos bal-

dios. N° 469. Con esta fecha se dice por esta Secretaria al Jefe de Hacienda de ese Estado lo siguiente: El Presidente de la República se ha servido aprobar la adjudicación decretada por el Juzgado de Distrito de ese Estado á favor de los C. C. Manuel Elias y socios de las demasias del rancho de su propiedad llamado "San Pedro," sito en el Distrito de Magdalena de ese Estado. En consecuencia se les ha expedido

el título respectivo de propiedad, cuyo documento se remite á Ud. á fin de que, conforme á las últimas disposiciones de fecha 18 de Febrero de 1886, proceda á hacer el cobro de la

parte que corresponde á ese mismo Estado, es decir: de \$451.07 cs., pues habiendo enterado igual cantidad correspondiente á la Federación los C. C. Elias y socios por conducto de su representante, el C. José A. Puebla, en la Tesorería general según aviso de la Secretaría de Hacienda de fecha 21 del que cursa, solo adeudan los interesados la parte arriba expresada, teniendo cuidado de dar aviso á esta Secretaria cuando se verifique el relacionado entero; advirtiéndole á Ud. que las estampillas fijadas al mencionado título han sido ministradas por los adjudicatarios, y que conforme á la liquidación respectiva, pues al practicarla esa oficina incurrió en el error de expresar que la verdadera superficie es de 15,037 hectaras, 67 aras, 08 centiaras, debiendo ser de 15,036 hectaras, 67 aras, 8 centiaras produciendo ésta un importe de \$902.14 cts. en vez del obtenido por esa Jefatura de \$902.26 cts." Y lo transcribo á Ud. para su conocimiento y á fin de que conforme al artículo 19 de la ley de 22 de Julio de 1863, se sirva mandar ese Juzgado dar posesión del terreno á los interesados; advirtiéndole á Ud. reforme el fallo de adjudicación expresando que la verdadera superficie es de 15,035 hectaras, 67 aras, 08 centiaras. Libertad y Constitución. Mexico,

Febrero 24, de 1888. P. o. d. S., M. Fernandez. rúbrica. O. M. Al Juez de Distrito del Estado de Sonora. Guaymas. Un sello que dice: "Republica Mexicana, Jefatura de Hacienda en Sonora." Num. 774. Tengo el honor de remitir á Ud. un certificado de entero que justifica el pago del valor de las demasias del rancho llamado "San Pedro," sito en el Distrito de Magdalena, adjudicadas á los C. C. Manuel Elias y socios, manifestándole á la vez que el importe de las estampillas fijadas al título que les fué expedido ha sido tambien satisfecho por los interesados. Libertad y Constitución. Guaymas, Octubre 18 de 1888. El Jefe de Hacienda, J. Suarez. M. rúbrica. Al Juez de Distrito. Presente. Año de 1888 á 1889. Un sello que dice: "Republica Mexicana, Jefatura de Hacienda en Sonora." Certificado N° 122. El Jefe de Hacienda y Contador: Certifican: que á fojas cincuenta y ocho vuelta del libro general de caudales de esta Jefatura, correspondiente al año fiscal actual, obra una partida del tenor siguiente: Al Márgen. "1888. Octubre 18." á C. de I. N° 23. Producto de la venta de terrenos baldios. Cuatrocientos cincuenta y un pesos, siete centavos, que por conducto de su apoderado enteraron en esta Jefatura los C. C. Manuel Elias y socios por importe de la parte que corresponde al Estado del valor de las demasias del rancho de su propiedad denominado "San Pedro," sito en el Distrito de Magdalena. La parte federal ha sido enterado

en la Tesoreria Gral de la Federación, según su oficio que se acompaña original. Billeto N° 125. \$451.07. Y para constancia se expide el presente en Guaymas á diez y ocho de Octubre de mil ochocientos ochenta y ocho. El Jefe de Hacienda, J. Suarez M. rúbrica. El Contador, R. Martinez. rúbrica. Un sello que dice: "Republica Mexicana, Jefatura de Hacienda en Sonora." Num. 775. Tengo el honor de remitir á Ud. el título de propiedad de las demasias del rancho llamado "San Pedro," sito en el Distrito de Magdalena, expedido á favor de los C's. Manuel Elias y socios, á fin de que acuerdo con lo prescrito en el artículo 19 de la ley de 22 de Julio de 1863, se sirva entregarlo á los interesados y mande darles posesión, en virtud de haber pagado el valor de dichas demasias y el de las estampillas fijadas al título, según aviso que doy á ese Juzgado en mi diverso oficio de esta misma fecha. Suplico á Ud.

se sirva acusarme recibo de la presente. Libertad y Constitución. Guaymas, Octubre 18 de 1888. El Jefe de Hacienda, J. Suarez M. rúbrica. Al Juez de Distrito. Presente. Estampillas por valor de noventa y dos centavos debidamente canceladas.

Recibí del Juzgado de Distrito, como apoderado de los C. C. Manuel y José Ma. Elias, y de los herederos de Dn. José Juan Elias, Plutarco, Rafael, Carlos, Manuel y el que suscribe, y Señoras Jesus y Dolores, tambien Elias, el título de propiedad de las demasias del rancho nombrado "San Pedro," sito en el Distrito de Magdalena de este Estado, cuya superficie es de 15,035 hectaras, 67 aras, 08 centiaras; el cual fué expedido por el C° Presidente de la República, Gral Porfirio Diaz, en la Capital de México, el veinticuatro de Febrero del corriente año; siendo el valor de dichas demasias el de novecientos dos pesos, veintiseis centavos. Guaymas, Octubre 15, '88. Alejandro Elias. rúbrica.

Es copia fiel y exacta del expediente original que obra en el archivo de este Juzgado de Distrito. Va confrontada y cancelados los timbres respectivos, y que se expide en cumplimiento de lo mandado por auto de veintidos de Febrero del corriente año, dictado en el expediente promovido en solicitud de dichas copias por el C. Procurador de los Estados Unidos de América, para la Corte de Terrenos. Lo que certifico como Srío. del Juzg°. de Dist°. en en el Estado de Sonora á los veintidos dias del mes de Marzo de mil ochocientos noventa y nueve. E. L. representado—sustitución—actuaciones—ó sea la legítima discusión de un negocio entre actor y reo ante Juez competente—como—no ser—tercero—dicha—hecho—P. del—respectivo—de—en derecho—escrito—que—el que—Norte 10,109.72 metros—los rumbos magnéticos—Hasta llegar á una mesa grande y chamizosa en donde se puso mohon—De aquí; Oeste 8,403.36 metros—de que es condueño hace algunos meses, vengo en súplica de Ud. se sirva mandar traer á la vista dicho expediente de denuncia de las demasias del rancho de San Pedro—Miguel Siqueiros—Vale—E. P.—(representado)—(poder)—(tramitaciones)—(Julio)—(Juez)—(Por tanto)—(los)—(de)—(un)—(terreno)—(bia)—(á todos)—(el)—(la)—(Pedro)—(que)—(norte 78° 14' E., 23,225 metros)—(á lo largo

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

(Plaintiff's Exhibit No. 19)



The limy or calcareous hill the land mark for the north center
mon. of the San Rafael del Valle P.L.G. Pat. S.R.L. no. 1 on summit

No. 201

Rafael's Exhibit

Com. 1000

U. S. 1000

(Plaintiff's Exhibit No. 20)



The initial monument of the San Pedro grant Antonio Gonzalez is in its
immediate foreground. Consueco Chico to his immediate right - both
sitting on monument.

Plaintiff's Exhibit No. 21



Plaintiff Exhibit No. 22



No 200
Relj Cattle
Company } 6,468
McTate

Plaintiff Exhibit No. 23



United States of America
Territory of Arizona

I, James H. Reeder Clerk of the Court of Private Land Claims do hereby
certify that the above and foregoing five (5) photographs ~~referred~~ exhibits 20 19, 20, 21, 22 and 23
are copies of the exhibits introduced in evidence by the plaintiff in the trial of the case
entitled The Relj Cattle Company vs The United States and No 10 - San Pedro grant
and form a part of the record of said cause.

January, 1900

1/18

Given under my hand and the seal of said Court this 27th day of

James H. Reeder Clerk

By H. L. Long Dep

de la linea limítrofe)—(hay)—(ochenta)—(Miguel Siqueiros)—No
vale.

GUILLERMO P. COTA. [RÚBRICA.]

(Form No. 88.)

Form for Authentication of Signature.

CONSULAR AGENCY OF THE UNITED STATES,

March 23rd, 1899.

I, Frank M. Crocker, consular agent of the United States at Guaymas, Mexico, do hereby certify that the signature of Guillermo P. Cota, secretary to F. R. Nieto, federal judge of the State of Sonora, at the foot of the paper hereto annexed, is his true and genuine signature, and that the said Guillermo P. Cota is personally known to me.

In witness whereof I have hereunto set my hand and affixed the seal of the consular agency at Guaymas, Mexico, this day and
464 year next above written, and of the Independence of the United States the 124th.

(Signed)

FRANK M. CROCKER,

[CONSULAR SEAL.]

U. S. Consular Agent.

(Endorsed :) Filed in the office of the clerk, court of private land claims, June 16, —. Jas. H. Reeder, clerk, by R. L. Long, deputy.

(Here follow diagrams and photographs marked pp. 465, 466, 467, &
468.)

Endorsed on cover: File No., 17,643. Court of private land claims. Term No., 204. The Reloj Cattle Company, appellant, vs. The United States. Filed February 15th, 1900.

50.

By. of Ford for Appellant.

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Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 30.

THE RELOJ CATTLE COMPANY, APPELLANT,

vs.

THE UNITED STATES ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

STATEMENT OF THE CASE, POINTS AND AU-
THORITIES, BRIEF AND ARGUMENT FOR
APPELLANT.

ROCHESTER FORD,
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Supreme Court of the United States

OCTOBER TERM, 1900.

No. 204.

THE RELOJ CATTLE COMPANY, APPELLANT,

vs.

THE UNITED STATES ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

Statement of the Case, Points and Authorities, Brief and Argument for Appellant.

This suit was instituted in the lower court by the filing of the petition (Rec., p. 1) asking for the confirmation of the grant known as the San Pedro. The petition alleged that the grant was a complete and perfect title in fee, being a sale of land by authorized officers, and that it was recorded and complied in all respects with the provisions of the treaty. The proceedings leading up to the sale were instituted in March, 1821. The customary routine of survey,

appraisement, offers of sale, final auction, approbation of sale, and payment of the money into the treasury was followed, and the final title was issued on May 8, 1833, and record was made in the proper book of *Toma de Razon* (Rec., pp. 105-204).

Documentary evidence of deraignment of title was introduced, and also evidence to identify the various calls and landmarks set out in the record of the survey of the grant (Rec., pp. 18-53). As to the details and manner of survey, opposing evidence was offered on behalf of the United States (Rec., pp. 54-97).

The lower court held (Rec., p. 328) that the construction of the granting papers was that four sitios and no more were sold and paid for; that this made the grant one by quantity, and that the owners of the grant had secured from the Mexican government this amount, which had been located south of the international boundary line, and that this action was conclusive.

The petition was dismissed and the claim rejected. Claimant was allowed an appeal, and duly prosecuted the same to this court.

POINTS AND AUTHORITIES.

The papers show that the tract of land as originally surveyed was located almost entirely north of the international boundary line.

Such rights in the United States as were fixed at the time of the treaty could not be changed by any subsequent action of the Mexican authorities.

U. S. vs. Yorba, 1 Wall., 412, 423.

ARGUMENT.

This case seems to turn largely on the construction to be given to the survey as set out in the original title papers. It is contended by claimant that the survey started from a central point, while the government contends that only exterior lines were run.

If the central point can be fixed, then under the ruling of this court in *Ely's Administrator vs. The United States*, 171 U. S. 220 241, "the actual grant can be established by reducing each measurement therefrom to such an extent as to make the area that of the tract purchased and paid for."

The general custom, undoubtedly, was to survey grants from a central point, but it must be confessed that as to surveys custom does not throw any steady light. Most of the grants which have been passed on by this court were measured from a central point. The *Los Nogales de Elias*, however, was not. It did not even begin from a corner, but started from a point in the south line.

There are two considerations that seem to be entitled to great weight as supporting the center theory of this grant. One is that the papers, after giving the recital of the survey, state that with these operations there were "centered," "sentrizados" (Rec., p. 112, 15th line from bottom; also, p. 136, 2d line from top), four sitios. It does not seem reasonable to argue that this word means anything but "centered." There seems to be no other meaning that can be legitimately given to it in this connection. If this is its meaning, there appears to be a direct and unambiguous statement that the sitios were in fact centered by the survey, and if this is true, then the only point which can be taken as the center is the one described as the initial or starting point.

Again, the record shows that the appraising officers, "in consideration of the examination they had made with their

eyes and inspection of the lands by surveying them, valued the three first sitios at \$60 each and the remaining one at \$10" (Rec., p. 136).

This language has meaning under the theory that measurements were made from a central point and the tract divided off into four parts, each called a sitio. There could thus be the three first sitios, and also the remaining one; but if only exterior lines were run, what meaning have the words "three first sitios," and how could they be distinguished from "the remaining one"? Is not this language necessarily based on the fact that the sitios could be distinguished by the survey one from the other, three having such qualities (running water, presumably) as made them worth \$60 each and the remainder (without running water, presumably) being worth only \$10? •

In the Nogales grant there was no central point, but the land was appraised as a tract, as it was all dry. In the present case, as above shown, the land varied in quality. It was spoken of as being divided into four parts, three sitios of one kind and the remaining one of another.

In trying to arrive at the understanding that the parties had at the time, it is respectfully submitted, from the above considerations and what will follow, that their proceedings were based on a survey from a central point. In the examination of this case no arguments based on the refinements of grammar or of surveying seem worthy of consideration. These people were unskilled in mathematics. Their ideas of the points of the compass were often confused, the witness Tipton testifying (Rec., p. 102) that he had seen a great many Mexicans—and this is at the present day—who did not know the difference between the east and west. Even approximately correct estimates of courses and distances are unknown to most—perhaps it would be safe to say to all—uneducated Mexicans, even now. Those who have had occasion to trace on the ground the surveys as recited in these various grant papers have come to know that state-

ments of distance must be disregarded. At a time when there was no general system of surveying the public lands of Mexico—no townships, ranges, meridians, or sections that could be referred to—and every grant had to be specifically located so as to be capable of identification by its own calls and sometimes those of adjoining grants, it was simply impossible that course and distance could control. To illustrate: It would have been useless to survey, say, fifty cords on a level plain and designate the extremity by a monument of stones, because if such monument were washed away or removed from any other cause, there would be no way of identifying the place where it had been; but if the distance was ignored and the line lengthened till some specific point in the topography of the country was reached, such a point could be clearly described, so that it could be identified and remembered by illiterate people, and it would for all time remain as a satisfactory landmark of the tract. It should occasion no surprise, therefore, if it is found in all these grants that computations of distances and areas constantly fall far short of the facts as developed by later and accurate surveys. Regarding the inaccuracy of Mexican surveys, this court said in *U. S. vs. Billings*, 2 Wall., 444, at page 447: "Perhaps the province of California at that time (1839) could not furnish a man capable of making an accurate survey;" and this was doubtless just as true of the province of Sonora in 1841; and the court said in *Noe vs. U. S.*, 1 Hoff Land Cases, 162, 169, referring to an estimate of the contents of a tract of land: "This is perhaps as close an approximation to the real quantity as often occurred under the loose and inaccurate ideas of the extent of land formed by the former inhabitants of this country." It is notorious that the quantity of land within the natural boundaries of Mexican grants often far exceeded the estimate of the surveyor, but this circumstance could not restrict the language of the grant

or change the boundaries or the intention of the parties (*White vs. Burnley*, 20 How., 247).

That this grant was located and occupied and at least one boundary line, the one on the north, commonly known and recognized, appears from the history of the times. In the *San Rafael del Valle* grant, which was before this court in *Camou vs. The United States*, 171 U. S., 277, the title paper states that the measurement from the center of that grant to the south "ended at the limits of the *San Pedro* grant, land belonging to *Don Jesus Perez*," and the documents showed that his surveys extended up to that place, the monument of which standing there was taken "as the boundary of one and the other interested parties."

With these facts in mind, we come to an examination of the testimony in the endeavor to identify on the ground the calls of the survey as set out in the title papers.

Mr. George J. Roskrue testified (Rec., p. 18) that he had been four terms county surveyor of *Pima* county; several terms city surveyor of the city of *Tucson*; six years chief draughtsman in the surveyor general's office; three and one-half years chief clerk of the surveyor general, and a year and a half surveyor general. He further testified that he had located the northeast corner monument of the *San Pedro* grant on the bank of the *Cañada de la Bachata* (Rec., p. 19); that he had located what he had reason to believe was the center monument of that grant (Rec., p. 20), and testified that "I used my utmost endeavor to locate this grant as it was originally located by the Mexican government, and I am perfectly satisfied in my mind that that is the initial monument, and that the northeast corner is at the *Bachata cañada*" (Rec., p. 22).

Mr. Philip Cortzen testified (Rec., p. 24) that he had been an engineer, surveyor, and draughtsman for about nine years; that he was county surveyor of *Pima* county and a United States deputy land and mineral surveyor, and able to read and write the Spanish language fairly well.

This witness went fully and carefully into the details of the survey and of the map made by him and introduced in evidence (Rec., p. 24 *et seq.*). When the calls are located on the earth's surface it appears that they all tally, except that the distances are out in the first three calls. The papers show that the second call "ended in the valley itself near a little hill distant three cords" (Rec., p. 134). Mr. Contzen testified (Rec., p. 26) that he found in a valley, near a hillock, a pile of scattered rocks about 20 feet long, right close to the little valley. If it should be assumed that a transposition was made in the calls as to the first course, and that the second one should have been the first, then all the calls correspond as to natural objects and with reasonable certainty as to distance. This substitution would make the expediente read as follows:

"On the same day, month and year being on the spot and the interested parties having agreed in the presence of the fiscal agent and other officers, I ordered the erection of a corner monument and square, from which taking the direction from the southwest to the northeast, there were measured and counted fifty cords, the last ending in the valley itself near a hillock, distant three cords," etc.

With this change, the testimony of Mr. Contzen shows that the calls correspond upon the ground with the description given in the expediente. He goes into the details of the survey and identifies on the ground the various terminations of the lines as they are identified by the topography of the country. The call ending "in front of the Huachuca mountains upon a rocky hillock," the one "on a bushy tableland," the one "in the cañon or gulch of Bachata," and the others ending "in the middle of the valley of the San Pedro river," the one ending "after passing the river at the foot of a hill," the one ending "in the dry creek of Las Barras," the one ending "on a black mound," the one ending "at the descent of the Picacho," the one ending "in a thick forest," the one ending "in the dry creek of Del Malpais," the one

ending "at the ascending slope of a red table-land," and the one ending "on the same table-land, where I ordered put a corner monument," all these are identified by him (Rec., p. 24 *et seq.*).

More than this, he goes on to prove that the grant cannot be located elsewhere. The Picacho peak is the southeast corner of the grant, and Mr. Contzen testifies (Rec., p. 31) that there is not a similar peak within about 40 miles.

As opposed to this testimony, the government introduced the witnesses H. O. Flipper and William M. Tipton. Each of these gentlemen was called, so it seems, only to support a theory. That this statement is warranted is shown, we submit, by Mr. Flipper's testimony at the end of his cross-examination, as follows (Rec., p. 78):

"Q. Did you make an effort to locate that grant in Old Mexico? A. No, sir.

"Q. Did you make an effort to locate it in the United States? A. No, sir."

On reading all of his testimony the conclusion seems to be a fair one that it is of no value whatever as to any material matter of fact. His endeavor was, using his own language, "simply an effort to locate the original calls without any reference to their position on the surface of the earth" (Rec., p. 76).

"Q. With reference to that monument, where is this map or plat of survey as described in the original grant with regard to its position on the face of the earth? A. It may be in China or it may be in Sonora" (Rec., p. 76).

Further on the witness testified:

"This is the monument that the expediente says is on the Bachata cañon. I found the Bachata cañon and I found a monument there. I do not know whether the monument that I found is the one described in the expediente or not." (Rec., p. 76).

Mr. Flipper's theory led him to the extreme position indicated in the following testimony of his (Rec., p. 73):

"Q. What is the drain of the slope of the country? A. Northwest.

"Q. Then if Antunes and Salas had failed to agree upon the division of the water, how could Antunes have got his water? A. I do not know, unless he could make water run uphill.

"Q. Then if they actually entered into an agreement by which each man took a share of that water, Antunes could not get his water upon his land without carrying it? A. There was nothing said about what it was to be used for.

"Q. Do you know any method by which Antunes could have obtained any benefit? A. By having an arrangement for raising water.

"Q. He would have to raise the water? A. Certainly."

This would seem to evidence the unreasonableness of Mr. Flipper's theory and testimony in support of it. As a matter of course, the division of the waters of the marsh was effected so that each person could lead the water on his land by the force of gravity, in ordinary irrigation ditches. To suggest that this division of the water contemplated some arrangement for raising water is the most advanced position so far presented in the literature of the land-grant subject.

Mr. Flipper has testified for the government in all these cases except, perhaps, one, and always in opposition to the grants. What was plain to every other witness and plain to the members of the court of private land claims and to this court he has generally been unable to see. In the Sonoita grant, for instance (confirmed by this court in *Ely's Administrator vs. The United States, supra*), in relation to the topography, Mr. Flipper testified that this "induced me to believe that the country did not conform to the expediente absolutely in anything, in fact" (p. 45 of record in that case). He testified that "he went to the center monument, as claimed, and made a thorough examination of the vicinity there, and I was satisfied that was not the place" (p. 43 of

record in that case). The other witnesses, however, identified the same, and this court said in its opinion (171 U. S., 220, 241):

"In this case (the Sonoita) if it is possible to locate the central point from which, according to the report, the survey was made (and we judge from the testimony that it is possible)," etc.

Mr. Contzen's testimony is not controverted as to the facts. He testifies that he followed the calls and found monuments and natural objects answering clearly the description of the expediente. No one proved that he testified erroneously, or that the monuments and objects are not there. The government's witnesses, however, reversed the classic saying, and urged that "it is a theory that confronts us, not a condition." Mr. Tipton arrived at the following conclusion (Rec., p. 104):

"Q. If you could find absolutely every call in the expediente on the lines as laid out by Mr. Contzen, you still would not say that it could not be possible that the original survey was not made from the center? A. I have already made one answer, that it would not be correct."

That is to say, as it seems to us, these witnesses would disregard every fact, no matter if these facts absolutely prove the correctness of Mr. Contzen's survey, and would rely on their theory, though such theory is not supported by any facts. Mr. Tipton goes to the full extent of denying that the survey would be correct even though it were absolutely proved to be correct.

It is submitted that the initial monument designated in the expediente as "the erection of a corner monument and square" (Rec., p. 134) is the center monument, and that the lines drawn from it to the northeast, southwest, southeast, etc., corner there would be at right angles if properly drawn, and we rely, as above set out, on the testimony that such lines drawn from this central point will correspond to

the calls of the expediente, while there is no proof that any other theory is justified by the facts. If the government had assumed that a corner monument was the starting point, and had followed this with proof that the calls from such initial point can, in fact, be verified on the ground, this would unquestionably be entitled to as much weight as we are asking the court to give to the evidence adduced by plaintiff. But this is not done. So far as the record shows, the actual grant as originally surveyed can, in fact, be identified only as resurveyed by Mr. Contzen.

Much time was taken by the government in endeavoring to prove that the place petitioned for, as set out in the title papers, is the place now called San Pedro, which is south of the international boundary line.

As to all this we call the attention of the court to the fact that the petition of 1821 expressly states (Rec., p. 106) that there had been registered "el paraje despollado del rio abajo de San Pedro," which means a depopulated place on the river *below* San Pedro. On October 25, 1832, when report was made to the supreme government of the State, these proceedings are said to refer to "four sitios of land in the place named down the San Pedro river," and the order, dated October 31, 1832, for the issuance of title refers to "the four sitios surveyed at the locality named down the San Pedro river." It seems clearly to appear from an investigation of the language of the grant that the land denounced, surveyed, and sold was down the river, and therefore north of what was then known as San Pedro. The place called San Pedro was apparently not itself abandoned at the time of the survey, because the record speaks of the "survey from the house of San Pedro."

In further considering this survey we find that the San Pedro grant was located at a time when there was no other tract of surveyed land in that part of the San Pedro valley. For this reason, probably, it was surveyed with unusual

care and tied to the ground by an unusual number of calls for natural objects.

In fact, there are in the field-notes fourteen calls for natural objects, such as can be identified upon the ground.

In addition, fifteen stone monuments are called for, ten of which, as shown by the evidence, were found at the points described.

Usually the surveyor who seeks to locate a tract of land by boundaries described in a conveyance more than eighty years of age will think himself fortunate if he actually identifies two or three of the corners called for, and it is seldom we find more than a half dozen, at most, of the landmarks mentioned in any single description of land.

Nor is it in the number of calls only that these field-notes are exceptional. That the natural objects called for may answer the description given, they must be found in three certain lines, and also in the very order in which they are mentioned in the expediente. When a competent surveyor actually finds the calls in such a set of field-notes clearly and unmistakably answered at a certain place, we may be sure that he has found the very tract of land described.

The person who thinks that he can find such a number of natural objects and monuments in proper order and in lines as they are described at any other place cannot fully appreciate the difficulty of the task.

If we take only the center monument and two calls in the southwest course and two calls in the southeast course, these will alone locate the San Pedro grant with absolute certainty (Rec., p. 43).

The center monument, as the evidence shows, cannot be duplicated in the San Pedro valley. The thick grove or forest, called for at a point 50 cords to the southwest of this center monument, is also an unmistakable landmark, and the Arroya del Malpais was also a most satisfactory natural limit for the second call of 50 cords to the southwest. On the southeast course we find the first call ends in the middle

of the valley, and the second call of 50 cords crosses the river and ends at a monument at the crest of a hill.

If there were no other calls answered, we would be sure that here, and here only, can this tract of land be located.

When to these proofs we add twice as many more, almost equally conclusive, all doubt is removed, and the outer limits of the tract are defined with most satisfactory certainty.

It is urged by counsel for the United States Government that the field-notes (which we find so satisfactory when applied to the right tract of land) are so indefinite as to be almost worthless.

This view is based upon an examination of such field-notes *apart from the land*. A description can be tested only by being applied to the land described.

Many descriptions which are apparently correct when considered by themselves, are found to be worthless when applied to the ground. On the other hand, descriptions which seem ambiguous or erroneous to one who does not know the premises are often found perfect when applied to the land described.

One objection made is this: That the field-notes indicate a survey around the outer lines of the tract, and not (as we claim) from a center point.

This view is based upon the fact that the surveyor, after running a line of 250 cordeles, and after indicating that he has reached the end of such line and called for a corner monument, does not *say* that he returns to the center monument, but goes on to run another line.

He commences the next line by words equivalent to the word "thence," as used by surveyors of the present day.

It is true that in surveys made recently we understand that when the surveyor writes "thence" he means from the point where he left off. But this is purely a matter of custom. The Mexican conveyancer of eighty years ago, *knowing that it was the general custom of the time to survey from the*

center, construed each call of "thence" or "from there," when coupled with words indicating the direction, as meaning from the center monument.

He was not warranted in any other construction. It was not the custom to set the compass and give the direction of the line except when starting from the center monument.

Our claim of a survey from the center is, then, in accordance with the custom of that day, and does no violence to the language used.

Field-notes are always very concise, often abbreviated, and no one can safely interpret them unless he has full knowledge of the surveyor's modes of expression and the customs of the time.

It is asserted, further, that the words used at the end of each line of calls indicate that the line run was a *side* line.

We do not so understand them. We believe these words were merely intended to mean that at the end of the line he (the surveyor) had established a corner, from which, by running side lines, a square would be inclosed, etc.

This construction harmonizes with the custom referred to and also with the survey actually made.

It should be remembered that the description found in the expediente is partly the work of a copyist, who knew plenty of long words, but evidently had very little knowledge of surveying.

The surveyor himself knew what he had done, but could not tell whether or not the words used were fit to describe his work. Their description, *taken apart from the survey and the land*, might be considered ambiguous, and the style of the survey would be more or less in doubt.

But to a surveyor *on the ground*, there is no ambiguity. He finds abundant proof of what was done, with which the intended meaning of the field-notes is easily reconciled.

In the same way he easily corrects errors in the *directions* mentioned.

In Spanish the difference between east and west is so

slight (*este* and *oeste*) that they seem to have been used indiscriminately.

The calls for direction indicate correctly whether the course is *northerly* or *southerly*, but to determine whether the course run was northeast or northwest the surveyor must depend upon the landmarks called for.

This is no unusual thing in surveying. The rule requires the line to run to the corner or natural object called for, regardless of the direction mentioned. This relieves the case of any doubt.

On the ground it is seen that the call for the "forest," "Del Malpais," and the red mesa is bound to be southwest; that the line run to cross the river to the black mound and to the slope of the Picacho was certainly measured to the southeast, while the line run to "the river at the ford and rapids," and to the Bachata gulch, was surely run northeast. But, it is asked, when government experts were wandering up and down the San Pedro valley, ostensibly looking for this grant, why did they not find it?

The answer is easy. They did not really *try* to find it. There is only one way to locate a tract of land on the ground. It must be done with compass and chain, by careful work. There was one error in the field-notes, and possibly this, being at the very beginning, may have misled them.

The call given as the first in the northeast course runs 50 cordeles to the river at the ford and rapids. A careful examination shows that this was intended, not for the first call, but for the second, while the call interlined for the first was evidently copied in as the second call (and part of the third).

As proof of this it is only necessary to look at the surveyor's map of the grant. From it we see that there is a call lacking on the west side of the river; also that there is a call to spare on the east side.

And by carefully sifting out of the calls on the east side those that are correct, and which are clearly answered in

that part of the line, we find that this is left: "Monument in valley itself in front of the Huachuca Mts." This fits exactly as the limit of the first call of 50 cordeles northeast from the center monument.

There was then merely a transposition of calls, such as is often found in conveyances.

Usually it occurs from an *inserted* call, which in copying is misplaced. Probably the surveying party started and ran the northeast line from a point half way between the center monument and the ford and rapids, measuring four calls only.

To make out the distance (and to center the tract more to their taste), they put the center monument 50 cords further to the southwest, but in line with the work already done. This made it necessary to insert the call, which was misplaced, as before explained.

With this single error corrected, we find that the survey fits the ground with remarkable accuracy, and that the surveyor was even mindful of distance to a degree not often noticed in surveyors of that time.

Like many of his class, he had little knowledge of words, but he selected landmarks with such good judgment as many a bookish surveyor might envy.

Counsel for the government may argue that this grant cannot be located; but it is idle to discuss that point when it has been located.

They may argue, and prove (by blackboard exercises), that it may have been or might have been located in some other locality. Such proof, if proof it can be called, has no weight when placed in the scale against proof of location by accurate surveys and monuments found.

A survey which was carefully tied down by calls for fourteen natural landmarks, which are found and sworn to, and by fifteen monuments, of which ten are found and sworn to, cannot be dragged from its place by any amount of guessing or surmising, or even by the most brilliant crayon-work

which a vivid imagination may picture out on the black-board.

Counsel for the defense have introduced no evidence which should have weight as against the case made by claimant. The most that is shown by them is this: That certain government agents were sent out to locate the San Pedro grant and failed to find it.

But the evidence of these agents also shows that they did not search carefully for this survey *in the locality where it is claimed to be*, and where local traditions place it, and where it has been found by at least three competent and honorable surveyors.

A hundred people may search for a lost golf ball, but what is their evidence worth as against that of one man who actually finds the ball?

The defense seems to be scarcely more than suggestive of a theory, and that theory is only in effect that the San Pedro survey *may have been made* higher up the river than as claimed by plaintiff.

We insist that such a defense, in order to be worthy of any consideration, should be backed up by positive proof that the survey actually was located further south.

If their theory is correct they should be able to prove it by showing that the landmarks called for in our expediente are found, in proper order and as described in the field-notes, at some other place, and that they are not found, as we claim, on the tract of land in controversy.

They have not even attempted to disprove plaintiff's case, nor to prove another and different location of the grant.

It is claimed that the San Pedro survey was not made, as plaintiff contends, from a central point; that the directions as given in the field-notes are impossible, and the government agents, who were never over the lines of the survey and who were not familiar with the field-notes, can make nothing of them.

In answer we say that a survey from the center is to be expected, because it was the general custom of that time.

To assume that the survey was made on the side lines will make the San Pedro river run across the corner of the tract.

This is an absurd supposition. The survey is in a valley, and the river is proven to be nearly in the center of the valley.

A survey from the central monument, as claimed, covers 10 miles of the river and all the good land in that part of the valley. Considering the lines run *as side lines*, they would include not half so much of the river, and would miss much of the bottom land on one side of it. Rafael Elias was ignorant, perhaps, but he knew better than to take less of the river than was rightly his portion, or than to take worthless gravelly hills in place of rich bottom land.

But the conclusive argument against a survey by side lines is found when we apply the field-notes to the land claimed under them. No surveyor or other person who has been over this tract of land with these field-notes at hand has ever doubted that the survey was made from the center. The very large central monument proves it.

But one *large* monument is found. If surveyed about the sides we would expect to find one at each corner.

The *location* of this monument, near the center of the valuable land in the valley, also indicates that it marks the center and not a corner of the tract.

In locating the San Pedro grant we notice, *going a little more into details*, that two of the lines surveyed cross the San Pedro river. It cannot be moved east or west, because it is tied to the river. No one pretends that it can be located further north than its north line, as surveyed and claimed in this suit.

And this north line, so claimed, is only about 20 miles from the source of the river.

Hence this grant, being fully 10 miles in length north

and south, can be moved up the river barely 10 miles at the most.

In other words, there is a possible chance to locate only two surveys of the size of the San Pedro between the limits within which it is conceded that this survey was made, to wit, between the source of the San Pedro river and the Bachata gulch.

The surveyor's notes (Rec., p. 134) carefully describe a contention had, before the line was run, between Senor Antunez (or his attorney), who claimed to be in possession at or near the source of the river, and Elias, for whom the survey was to be made.

Antunez was willing to have the survey made "down the river," but claimed to be in possession there near the river's source.

To induce Elias to go further down, an agreement was made that in such case Antunez should not use all the water, but that the water of the marsh (*the permanent water of the river*) should be equally divided between them.

This agreement, as well as the field-notes of the San Pedro grant, show that the survey made for Elias was made "down the river." In other words, it is clear that a survey at the head of the river was left for Antunez, and as there is barely room for one such survey above the San Pedro as we claim it, this grant cannot be moved any further up the river without crowding out Antunez and doing violence to the surveyor's report.

As before stated, it cannot be moved down the river, because its north line has been practically established at the Bachata gulch, and no one has ever intimated that it could be placed further north. Hence, even without reference to other natural objects, the river alone and the preliminary agreement mentioned establish a strong probability that the San Pedro grant was located about where our surveyors found it.

Local tradition is also of great value in determining the

location of an old survey. In this case we find (Rec., p. 168) that in 1883 James M. Hall purchased that part of this San Pedro grant in Cochise county, Arizona, and paid for it the sum of \$20,000.

It is safe to assume that before making so large an investment he must have been well satisfied that a large part of the grant was in Cochise county, and at that time (17 years ago) it was easier to get evidence on this point, as his purchase was made of Manuel and Jose M. Elias, sons of the Rafael Elias who located the survey. There is also in evidence a contract for the conditional sale of this land, which serves to show that a large part of this grant was believed to be located also in Cochise county.

There are many other items of evidence, all of which tend to show that local tradition placed the San Pedro grant just where the surveyors who testified in the court below located it.

Upon the ground, standing at the center monument, remembering that the man for whom this tract was surveyed was a first settler and had his choice of the land, one is bound to admit that the monument centers the very tract which a first settler would be likely to select.

Referring to the field-notes (Rec., p. 134) and following the line to the southwest (the last call in the field-notes), he finds first (about $1\frac{3}{4}$ miles from the center monument) the grove of forest trees referred to as the limit for the first call of 50 cords.

This grove, as the evidence discloses (testimony of Contzen, Rec., p. 24 *et seq.*), is the only landmark of the kind for several miles up and down the river, and it alone identifies the center monument almost beyond dispute.

Proceeding further on this (southwest) line, all possible doubt is removed when he finds (about $1\frac{1}{2}$ to 2 miles beyond the grove) the "Arroya Malpais," a very rocky draw or dry creek, and still further on the same line a red mesa or tableland, the limit of the third call on this line.

This red mesa is also shown by the evidence to be unique, no other red soil being noticeable in that part of the valley.

This would seem to be sufficient ; but the surveyor, with quite remarkable foresight, adds to the certainty of his description by placing the limit of his last call on this (southwest) line on "the same red mesa."

To answer the calls in this line it then becomes necessary to find not only a red mesa, but one wide enough to be the limit of two separate calls, or at least $1\frac{1}{2}$ miles in width, and this mesa is shown to be a smooth table-land, and the southwest corner is found on "the same red mesa," on the ascending slope of which the third monument on this line is located.

This line, then, has in it but four calls of 50 cords each, and the total length of the line is correctly stated to be 200 cords.

It is noticeable that the two other lines surveyed are each 250 cords (5 calls). Why was this one made shorter ?

The reason for this is found in the fact that it ends at a little distance from the foot of a mountain, and that to continue even one-half of 50 cords would have carried the surveying party high up among the rocks, where no land of value was to be found.

Thus we have another proof that in tracing this line we have actually followed in the footsteps of the original surveying party. This being the last line run, they could not correct it without undoing all their work on the lines already run.

Returning to the center monument and taking from it a southeast course (the second course run as shown in the field-notes), the first 50 cords are said to end "in the middle of the valley of the San Pedro river."

This call is significant, in that it indicates that the *surveyor found no natural landmark near* ; hence he did the best he could, and called the point "in the middle of the valley," etc.

This call is satisfactory because it really ends on the smooth bottom land, where there is no landmark of any kind near at hand to which the call could be tied.

The second 50 cords on this (southeast) line call to cross the river and end at the "crest of a hill," which is the bluff on the east side of the river bottom. The river is crossed and the hill reached exactly as the field-notes state, and the crest of the hill is found at the proper distance, about $3\frac{1}{2}$ miles, from the center monument.

Next on this line we come to the monument at the dry creek, "Los Barros."

But the best landmark on this (southeast) line is the "black mound," mentioned as the limit of the fourth call (see Rec., p. 29). This is shown to be an unmistakable landmark, corresponding well with the expediente.

The last call on this line reaches "the slope of a peak," where is found a pile of rocks, the southeast corner of the grant.

Returning again to the center monument and taking a northeast course, we find the "ford and rapids" in the river are directly in line; also a monument "on a rocky hill," another on "a brushy mesa," and the northeast corner monument on the bank of a gulch, which, by reason of the "Bachata" bushes growing in it, is described as the "Bachata gulch."

But there was an error made in the field-notes here. The first call in this direction (50 cords) is said to end at the ford and rapids; whereas, *upon the ground*, we find the distance from the center monument to the ford is about double the distance usually traversed by this surveyor in measuring 50 cords—in fact, about four miles. In other words, this ford would naturally be the terminus of the *second* call, instead of the first.

Having observed the very fair degree of accuracy with which this surveyor measured distances, and the care taken to call for natural landmarks just where they may be found, we are at a loss to know how he could have made such an error at the very beginning of the survey. A careful study

of the field-notes on the ground explains this error, as before stated.

It appears that the first start was made from a point half way between the center monument, as claimed, and the ford.

This supposition makes the first call, as given, correct, ending at the ford.

The second call of 50 cords, to be correct, should end at the "monument on a rocky hill."

The third call ends on the "brushy mesa," and the fourth at the Bachata gulch.

These four calls were measured and recorded by the surveyor, and he states the distance run as 200 cords, which was at that time correct. It was the evident intention of the surveyor to have in each line five calls, making 250 cords.

But at the Bachata gulch, the land being nearly worthless, he cuts his line short at 200 cords.

Later, in order to make this line full 250 cords, it is decided to move the center point of the survey one call of 50 cords to the southwest.

To correct his notes in accordance with this change, the surveyor should have inserted a first call, ending in the valley at the point from which they set out.

This call we would expect to find exactly like that one which in the field-notes is found *on the east side of the river*, "in the valley itself in front of the Huachuca Mts."

Undoubtedly he did insert this call and it was misplaced. There were, then, in this line apparently three errors: A call is lacking on the west side of the river, a call which is not answered there is found on the east side of the river, and the length of the line is given as 200 when it should be 250 cords.

The theory of an inserted call accounts for all these discrepancies.

It accounts for the call short on the west side of the river and the call too much on the east side.

For when we find that the extra call on the east side is

"in the valley itself in front of the Huachuca Mts.," we are tolerably certain that this is the misplaced call, and that, to be as intended, it should be transposed to the west side of the river, where it would be really "in front of the Huachuca Mts."

On the east side it is in front of the Mule mountains, not the Huachucas.

The full length of the line was given as 200 cords, no doubt, before the center point was moved and the extra call inserted. As thus corrected, the northeast line is as satisfactory as the others, showing all the landmarks called for in proper line and at proper distances from each other.

And the fact that we are able with tolerable certainty to tell just how this line was run and to correct a clerical error in it by means of evidence found in the field-notes and upon the ground is of itself good evidence of the care with which this survey was made, and that we have found its true location.

Finally, it is not by considering by itself each detail of the evidence in this case that its real value may be determined. Each monument found helps to identify all the landmarks, and each landmark in turn assists in proving the genuineness of the monuments found.

The three lines of the survey made are found to converge to a central point, and at that point we find an ancient and satisfactory monument.

The lines thus prove the center monument, and the monument in turn sustains the lines as run, and all taken together (being fully in harmony with the field-notes at all points) prove a survey from the center, and that the landmarks and monuments found and the lines run are those indicated in the field-notes of the San Pedro grant.

It is speaking entirely within bounds when we affirm that a surveyor seeking to locate an old grant by landmarks and monuments called for in field-notes 80 years of age is not able once in a hundred times to find and identify the land

described with such satisfactory certainty as it is done in this case.

II.

If we are correct in our construction of this survey, that it was from a central point, then, according to the rule laid down by this court, as heretofore cited, "the actual grant can be established by reducing each measurement therefrom to such an extent as to make the area that of the tract purchased and paid for." The center monument, as testified to by the witnesses for the claimant, is north of the international boundary line, and the grant is therefore located almost wholly within the United States.

As to any proceedings in Mexico subsequent to the treaty, it is submitted that they are *res inter alios acta* as to the present proceeding. If anything had been done by Mexico prior to the treaty, it would doubtless be of binding force, but it seems clear that after Mexico has ceded territory to the United States she can do nothing further with regard to lands which have passed out of her territory and jurisdiction. If since the treaty Mexico has erroneously construed this grant and has located it south of the international boundary line, such action can constitute no estoppel against the claimant in this proceeding. Mexico can, of course, do as she pleases with her own territory. She can give it away. She may recognize as valid grants that we think invalid, and may locate such grants where and how she pleases, but such action does not bind the claimant in this present controversy.

As was said by this court in *U. S. vs. Yorba*, 1 Wall., 412-424:

"The rights of the inhabitants of the ceded territory to their lands depend upon the concessions made by the officers of the former government having at the time the requisite authority to alienate the public domain, and not upon any subsequent declaration of Mexican commissioners upon the subject."

If the title paper of a grant should show that the central point from which it was measured was located in Mexico, and in any proceedings subsequent to the treaty Mexican officials had declared that such central point was in the United States, it is at once apparent that as to this the officers and courts of our government would say that such action by Mexico could not bind the United States. We submit, in like manner, that the proceedings which have been gone through in Mexico cannot be availed of by the United States, and that the question to be determined in the case is, Where does the evidence adduced herein show that the central point was located?

It is submitted that a decision should be rendered confirming this grant according to the measurements from the central point, and that the decree of the lower court should be reversed.

ROCHESTER FORD,
Attorney for Appellant.



No. 30.

Petition for Rehearing.

Rec'd & dist'd May 31, 1902.
Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 30.

THE RELOJ CATTLE COMPANY, APPELLANT,

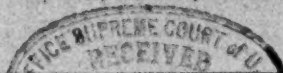
vs.

THE UNITED STATES.

**PETITION FOR REHEARING OR TO MODIFY
JUDGMENT.**

HORACE H. COBB,
Attorney for Petitioner and Appellant.

(17,643.)



Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 30.

THE RELOJ CATTLE COMPANY, APPELLANT,

vs.

THE UNITED STATES.

PETITION FOR REHEARING OR TO MODIFY JUDGMENT.

The petition of the Reloj Cattle Company respectfully shows that by the decision recently filed in the above cause the rights of petitioner were determined and made to depend upon the laws of Mexico and upon certain proceedings had under the laws of Mexico and of the State of Sonora.

That the said laws were not pleaded in the case as they should have been in order that petitioner might have an opportunity to deny their existence, nor were such laws proven at the hearing as they should have been, being laws of a foreign State.

That by reason of said omissions, the question as to the existence of such laws was not properly brought before the court and was not made subject of proof in the case, and

upon the hearing the court had no assistance from briefs of counsel; wherefore the said questions of foreign law did not have that full and careful consideration which their importance demanded.

And petitioner avers that by reason of the aforesaid inadequate presentation of the case the court has been misled.

That, if given an opportunity, petitioner is able to prove, and will prove, that the law of Mexico relating to grants of *surveyed* land (like the San Pedro grant) is not as stated in the said opinion of this court.

That such a grant as that proven in this case under Mexican law carries title to all the land within the boundaries described in the expediente, and that quantity does not govern in such grants.

In order to obtain satisfactory proof of such laws and of the decisions of the courts of Mexico limiting and construing them, petitioner has caused a communication (a copy of which is hereto attached) to be sent to His Excellency Porfirio Diaz, President of Mexico. Petitioner further shows that the wholly inadequate presentation of this case, both in the Court of Private Land Claims and in this court, was largely due to providential interferences, as follows:

That at the time this suit was commenced the Reloj Cattle Company had but three stockholders, all poor men owning scarcely any property except the land in controversy in this case.

That they employed Milton A. Bretz, of Abilene, Texas, as their attorney to institute these proceedings, and, being too poor to promise money, they gave him a share in the land as his fee.

That after suit was commenced and after Mr. Bretz had employed F. H. Hereford, of Tucson, Arizona, as local assistant, and after he had employed H. G. Howe, of Tombstone, Arizona, to make a survey of the land, and after such survey had been partially completed, Mr. Bretz died suddenly of apoplexy.

That afterwards Mr. Howe, the surveyor, also died, necessitating a resurvey, which was made by Mr. Contzen and barely completed before the case came on for hearing at Tucson.

And petitioner asks the court to consider these misfortunes, and that the land in controversy in this case is of great value; that it has been held by petitioner and those through whom it derives title in undisputed ownership and possession for more than seventy years; that the portion of said grant lying in the State of Sonora, and adjoining plaintiff's land on the south, is still held and occupied under and by virtue of substantially the same title as that on which plaintiff relies in this case.

That the title to the Del Valle grant, which adjoins the San Pedro grant on the north, and which was held under substantially the same title, has also been confirmed by this court as to the valuable part of the grant.

And that plaintiff's claim was denied by the trial court merely because of certain proceedings had under a foreign jurisdiction, under the laws of a foreign country, and entirely without notice to plaintiff.

And petitioner asks the court also to consider that the United States stands foremost among all nations for its great magnanimity and consideration for those dependent upon its good offices.

That there is no adverse claimant, and the United States is only anxious that justice be done.

Wherefore petitioner prays the court that its rights in the premises be not finally determined until opportunity has been given for a more full and satisfactory presentation of its case, when, with proper proofs before the court, and after the vital questions of law in the case have been briefed, the court may do full and exact justice.

To this end petitioner asks that a rehearing be allowed, and that at such rehearing petitioner be allowed to introduce in evidence the laws of Mexico and of the State of

Sonora and the decisions of the Mexican courts construing the same in so far as they affect the questions at issue in this case.

And, if in the opinion of this honorable court the rehearing hereby prayed for cannot justly be granted, petitioner respectfully asks that at least the judgment of this court be so modified as to be without prejudice to the rights of petitioner in any future controversy.

HORACE H. COBB,
Attorney for Petitioner.

STATE OF TEXAS, }
County of Tarrant. }

Before me, the undersigned authority within and for the said State and county, on this day personally appeared Horace H. Cobb, who, having been by me duly sworn, deposes that he is attorney for petitioner in the above cause and knows the contents of the foregoing petition, and that the statements of fact therein made are true to the best of deponent's knowledge and belief.

HORACE H. COBB.

Sworn to and subscribed before me this 26th day of May,
A. D. 1902.

[SEAL.]

W. ROUNDS,
Notary Public in and for Tarrant County, Texas.

BRIEF.

Statement of Facts.

Defendant's answer in this case (Record, pp. 15, 16) sets up three defenses :

First. That the San Pedro survey lies wholly south of the international line, "and is thus without the jurisdiction of this court."

Second. That plaintiff's title was not complete and its claim was therefore barred by limitation.

Third. That by denouncement proceedings commenced in 1880 the Mexican government had measured off to the owners of the grant "the area of the cabida legal," and that the claim sued for was thereby "entirely satisfied and discharged by the location of said four sitios within the Republic of Mexico."

The second defense was abandoned, and at the hearing it was admitted that plaintiff's title was good, being substantially the same as the title approved by this court in the Camou or Del Valle case.

The first contention also failed, as it was shown that a part of the San Pedro survey was in Cochise county, as claimed.

The location of the north line of said survey at a certain "bachata gulch" about $7\frac{1}{2}$ miles north of the international line was proven :

First. By evidence of three reputable surveyors, Geo. K. Roskrue (formerly surveyor general of Arizona), H. G. Howe, and Philip Contzen, who made surveys and plats showing its location as claimed, and by other evidence (Record, pp. 18-22-24-177).

Second. By the introduction of the proofs used in above-mentioned Camou or Del Valle case (in which it was necessary to prove the north line of the San Pedro grant, because it was given as the south line of the Del Valle grant), and these proofs also established the north line of the San Pedro survey as claimed, at the "bachata gulch." (See United States *vs.* Juan Pedro Camou.)

Third. It thus appears that the owners of the Del Valle and San Pedro grants were fully agreed on the boundary line between the two surveys, and that the owners of the Del Valle grant thus admitted, *against interest*, that the line was at the bachata gulch, as claimed by plaintiff.

Fourth. In the Camou case this court practically sustained this line. Having confirmed the location of the grant as claimed, with its north line at a certain "limy hill," this court could not consistently find the south line of the grant elsewhere than as proven. The distance from its north line at the limy hill to the south line at the bachata gulch, as proven, is $13\frac{1}{2}$ miles. (See San Pedro case, Record, p. 19, evidence of Geo. K. Roskruge.)

In order to find the north line of the San Pedro grant in Mexico (as claimed by defendant's counsel), it would be necessary for the court to stretch the Del Valle tract to make it over 20 miles in length, instead of $13\frac{1}{2}$ miles, as claimed by its owners, and to bring inside the original limits of the grant over 7 miles of river and valley which its owners never claimed.

Fifth. Moreover, even the surveys by Molera and Bonillas, shown on behalf of the defense, sustain plaintiff's claim, and show that both these surveys were made on the theory that a part of the San Pedro grant lay north of the international line (Record, p. 267, 21st line; see Bonillas' map, p. 369).

Molera expressly states that, as noted, "no adjoining

owners have appeared, because the regions to the south, east, and west are vacant lands, and *on the north side the boundary line cuts the San Pedro ranch, one part being in Sonora and the other in Arizona*, so that private parties are at a considerable distance" (Record, p. 267).

Counsel understands that both the Court of Private Land Claims and the Supreme Court practically concede the location as claimed.

This leaves but one defense—that resting on proceedings for denouncement, &c., the third and last point raised in the answer.

Counsel understands that the court sustains this as a good defense, holding, first, that the grant as originally made was limited to four sitios, and, second, that the four sitios which owners of the grant were entitled to had been given them by the Mexican government.

POINTS AND ARGUMENT.

First. The denouncement proceedings were not admissible as evidence. In the proceedings for denouncement Molera was instructed to mark on the ground the lawful area and the overplus, &c., "subjecting his operations to the general laws of July 22 and August 2, 1863" (Record, p. 264).

The land claimed in this case became a part of the United States in 1848.

The law relied upon, therefore, was not one which the court could take cognizance of, but it was necessary for defendant to both plead and prove it in the case. This was not done.

A judge is bound to know the laws of his own State, but not those of a foreign country; nor can he *without proof* ordinarily take cognizance of the laws of such foreign country so far as they differ from his own.

Wharton on Evidence, par. 300.

Greenleaf on Evidence, sec. 486.

Armstrong vs. Lear, 8 Peters, p. 73.

There is only one exception to this rule. The court will sometimes take notice of laws existing in acquired territory prior to the transfer of jurisdiction (*United States vs. Perot*, 98 U. S., p. 429; *United States vs. Turner*, 11 Howard, p. 668).

The law of Sonora referred to comes within the rule, *not within the exception*.

Second. The court holds that plaintiff's grantors had an interest of four sitios in the land surveyed. It follows that they were, as to the entire grant, tenants in common with the State of Sonora, with right of selection.

When two-thirds of the grant passed under the jurisdiction of the United States it amounted to a conveyance of the State's interest in that part of the grant to the United States. The plaintiff's grantors (the State's cotenants) *retained their proportional interest in each tract*. As to the north part they became cotenants of the United States.

When they conveyed the portion in the United States to James M. Hall, April 2, 1883 (*Record*, p. 162), he succeeded to their interest and became a tenant in common with the United States as to that part of the grant.

After the land passed under jurisdiction of the United States in 1848 the rights of its owners could not be affected by proceedings conducted in Mexico and under Mexican law.

After the change of jurisdiction in 1848 there were two separate tracts—one in Sonora, one in the United States. Nothing done by the United States could affect title to the Sonora tract.

Nothing done by Sonora could affect title to the tract in the United States.

It follows, as matter of law, that plaintiff still has the same proportional interest in that part of the grant in the United States that its grantors held in the entire tract.

And consistency requires that petitioner's case be treated

according to the principles laid down and followed in the Camou case; that the case be reversed and remanded; that there be set off to plaintiff such a proportion of the tract claimed as the area of four sitios bears to the total area of the grant as proven in the case.

If the Mexican authorities have been generous and have given to the owners of that part of the grant in Sonora more land than rightly belonged to them, it surely is no reason why the United States should take from plaintiff its interest in the land in question.

To hold plaintiff concluded as to its rights because of said denouncement proceedings is to do violence to many well-established principles of law:

First. Because the proceedings were within a foreign jurisdiction.

Second. Because the proceedings were had without notice to the plaintiff.

Third. Because the law under which these proceedings were had was not pleaded or proven and was strictly a foreign law.

Fourth. Because the proceedings connected with the Molera survey were held void, even by the Mexican authorities, and those connected with the Bonillas survey (the only proceedings approved by the Mexican authorities) were not commenced until 1887, about four years after plaintiff acquired title to the land in question, and yet plaintiff was not made a party to such proceedings (Opinion of Supreme Court, p. 9).

Finally, no Mexican law or decision is cited by the court to sustain the ruling that a grant such as the San Pedro was in Mexico a grant by quantity.

The Ainsa case is not a precedent here, because there is a

vital difference between the facts shown in that case and those proven in the case at bar.

In the Ainsa case certain lines of older surveys were mentioned within which applicant was to have seven and one-half sitios of land; and the *very loose character of the survey made* left it doubtful whether the survey was intended to mark the limits of the seven and one-half sitios or the limits of the larger tract out of which the seven and one-half sitios were to be afterwards taken.

In this case there is no chance for such a question to arise. The San Pedro survey was the first in that vicinity.

There is no chance to question the intention of the surveying party. They surveyed the four sitios which were to be sold; made a very careful survey.

It was tied to the ground by calls for natural objects with such skill that no surveyor or expert who has been over the tract claimed has doubted the correctness of the location as platted by Surveyor Contzen. (See evidence of Geo. K. Roskruge, ex-surveyor general of Arizona, Record, pp. 18 and 22.)

If such a survey, with a subsequent sale and a conveyance by field-notes according to the survey, carries in Mexico title to only the quantity mentioned, then all Mexican grants must be grants by quantity, because none can be more definite.

All Mexican grants, in fact all grants, mention quantity. It appears in all grants; in the application for the land; in the award; the survey, and the conveyance.

The amount paid always depends upon the stated quantity, and yet the statement of quantity is never held to be a controlling factor upon which proven boundaries can be disregarded. *Monuments control* (Washburn on Real Property, vol. 3, p. 407).

The rule that boundaries prevail over courses and distances, and that both prevail over statements of quantity, is the very keystone of the arch of real-estate law the world

over. Without this rule all would be chaos. Can we assume that Mexican real-estate laws are in this chaotic condition?

It does not appear that counsel for the Government in this case knows of any Mexican law or any decisions of the Mexican courts sustaining such a theory. None are cited.

But it seems to be assumed that the Sonora statute for denouncement of demasias, &c., is of itself proof that all Mexican grants were grants by quantity. Is it sufficient proof?

In this connection it is noticeable that *these denouncement proceedings, so far as they have come to the notice of counsel, have always been on application of the owner of the survey, and to increase his holding of land, not to cut it short.*

It does not appear that the government of Mexico or the State of Sonora ever deprived a claimant of any land within the proven boundaries of his grant, merely because he had more land than his title papers called for.

The true explanation of the law for denouncement of demasias seems to be this.

Many holders of old grants in Sonora could not prove the boundaries of their claims. They sought to have their corners and lines established by new surveys.

It was no doubt objected that, in establishing their corners, they would naturally be tempted to take in any desirable land adjoining.

To counteract this temptation the law provided that they must pay for all land taken in excess of the amount stated in their title papers.

Apparently the owners might rely upon their established boundaries if they chose to do so, but if they called upon the State to mark out anew the extent of their holdings they must meet such requirements as the State chose to make, one of which was the payment of a nominal price for land in excess, as before stated.

It may be asked why, if they owned all within the old boundaries, were they not asked merely to pay for the land

lying between the old and the new boundaries? The answer is easy.

The new survey implied that the old boundaries were not provable; hence the difference between the old and new boundaries was not provable. Therefore, *to make the law definite*, they were required to pay for the excess above the amount named in the original grant, because that was capable of being exactly determined.

Thus explained, the statute seems to be a fair one. *We have no reason to suppose that it was applied in disregard of established lines or rules of law.*

Certainly it does not, without additional evidence, prove that all Mexican grants were grants by quantity.

It is submitted that, until it is well proven that Mexican courts apply a different rule, lands in the United States should be located in strict conformity with the aforesaid rule, which prevails in all our States.

That the location of the San Pedro survey was proven with reasonable certainty, considering that it was surveyed over eighty years ago, and that the title to plaintiff's portion of it should have been confirmed according to the survey of Mr. Contzen. And, if not entitled to the entire tract claimed, plaintiff should have been awarded such a proportion of its area as the area of four sitios bears to the total area of the grant.

HORACE H. COBB,
Attorney for Petitioner.

APPENDIX.

(Copy.)

FORT WORTH, TEXAS, May 20, 1902.

To His Excellency Porfirio Diaz, President of Mexico :

By the treaty of Guadalupe Hidalgo the rights of purchasers of land who held under Mexican titles were to be fully protected by the United States. It was made clear that both parties to the treaty understood that those persons whose landed property was transferred from the jurisdiction of Mexico to that of the United States should lose nothing by reason of such transfer.

By two decisions just filed the Supreme Court of the United States has denied the rights of claimants to the *full* area of tracts of land measured and sold by the State of Sonora to the Mexican citizens from whom claimants derived their title.

It was admitted in substance in each case that claimants had good title to whatever land was covered by the original grant, but the court held that such original grant was in each case restricted to the exact area mentioned in the expediente, regardless of boundary lines proven and regardless of courses and distances as stated in the field-notes of survey.

The two decisions above referred to will, if not corrected, establish a precedent to be followed in many other cases, and we think it a matter of great moment, both to the thousands of land-holders whose titles will be adversely affected by such decisions, as well as to all the people of the United States who are deeply interested in the stability of their land laws, that the correctness of these decisions be at once questioned by reference to the laws of Mexico and the State of Sonora and the decisions of the Mexican courts.

In neither case did the defendant, The United States, plead or prove the law of Mexico applicable to such cases.

In the case of *The Reloj Cattle Co. vs. The United States et al.*: Counsel will at once file petition for a rehearing; asking, among other things, that at the rehearing they be per-

mitted to prove the laws and decisions of Mexico and of the State of Sonora as they apply to such grants as were passed upon in said case.

Under these circumstances, and knowing well your reputation as a most obliging and justice-loving man, I venture to ask your aid. The time allowed us is so short that, unaided, we could not hope to obtain satisfactory proof of the laws of Mexico on which these cases should have been decided.

Will you kindly aid us by referring this communication and the explanatory statements and questions herewith to some learned judge, who is familiar with the laws of Mexico and of the State of Sonora governing the rights of purchasers of such grants as the San Pedro (referred to in the opinion herewith in case of *The Reloj Cattle Co. vs. The United States*), and if possible obtain for us a brief statement of the laws and decisions of the Mexican courts applicable in said case.

Your kindly assistance in this will be most heartily appreciated by the parties interested and their counsel, and I believe it will be of great service to former citizens of Mexico, as well as to all the people of the United States.

Very respectfully yours,

Of Counsel for Claimants.

(Copy.)

LETTER TO HIS EXCELLENCY PORFIRIO DIAZ, PRESIDENT OF
MEXICO—EXPLANATORY STATEMENTS AND QUESTIONS.

*Facts Shown by the Record in Case of The Reloj Cattle Co. vs.
The United States.*

Plaintiff showed by grant from the State of Sonora and mesne conveyances a title to that part of the San Pedro grant north of the international line in Cochise county, Arizona.

Plaintiff's title was admitted to be good.

But it was claimed by defendant, first, that the San Pedro grant did not extend north of the said international line.

And, secondly, that, if it was partly in Arizona, as claimed by plaintiff, that it was a grant of 4 sitios only and that by

certain surveys and proceedings had under the laws of Sonora the true cabida legal of 4 sitios had been awarded to the owners in Sonora and that such proceedings were conclusive upon plaintiff.

This second contention was sustained by the court in the opinion herewith.

By actual survey the grant was shown to contain 56,131 acres, of which 38,622 acres were in Cochise county and 17,509 acres in Sonora.

The Supreme Court's opinion holds that, granting the correctness of the survey by Mr. Contzen, the proceedings for the denouncement of the demasias of the grant, and the survey by Bonillas, and the award of the cabida legal of said grant to the parties from whom plaintiff purchased, as set forth in said opinion, took from plaintiff any rights which it had in the premises claimed.

In this connection note the following facts:

That the San Pedro grant was surveyed in 1821.

That five officials represented the State of Sonora in making such survey.

That Elias, who afterwards purchased it, was represented at the survey by his attorney.

That the outer lines of the survey were then established by calls for numerous landmarks (as described in the expediente), and that 14 monuments were placed to mark the boundaries.

That *after* such survey, and after being cried out on 33 days, the land was sold as four sitios of land, &c.

That the land was paid for and title issued (with field-notes of the survey as stated) on May 8th, 1833.

That on May 3d, 1883, Elias and others (the very parties who afterwards obtained the cabida legal, as claimed) conveyed the land in controversy to Jas. M. Hall, from whom plaintiff acquired title.

That at the time of said conveyance to Hall, in 1883, proceedings were pending in Sonora for denouncing the demasias of the grant, but that such proceedings were ineffective, as they culminated in the Molera survey, which (as stated in the Supreme Court's opinion) was disapproved on May 3d, 1887.

Later, on July 4th, 1887, one Bonillas made a survey and both the cabida legal and the overplus were adjudicated in favor of said Elias and associates, and title to the demasias issued to them on February 24th, 1888.

Plaintiff had no notice of the denouncement proceedings. That said denouncement proceedings were directed to be subject to the general laws of July 22d and August 2d, 1863.

QUESTIONS.

No. 1. The opinion holds in effect that a grant like the one in question conveys only four sitios, an undivided interest in the tract surveyed.

Question *a.* Was this the law of Mexico in 1833, when this grant was completed?

Question *b.* Has it ever been the law of Mexico?

No. 2. The opinion holds that, notwithstanding the fact that title to the grant vested in plaintiff's grantors in 1833, yet title to plaintiff's portion of it was defeated by proceedings under a statute passed by Sonora in 1863.

Question. Is a statute permitted such a retroactive construction and effect in Mexico?

No. 3. The opinion holds in effect that, although Elias and his associates conveyed to Hall that part of the grant lying north of the international line (about $\frac{2}{3}$ of it) in 1883 that they could and did afterward, in 1887-'8, get the benefit of the entire cabida legal of the grant.

Question *a.* Is this permissible under Mexican law?

Question *b.* Is it not necessary that all parties interested in the grant have notice of such proceedings?

No. 4. In the United States it is a general rule of law that, in locating lands, boundaries and landmarks govern first; next, courses and distances called for in the field-notes; and last of all (if neither boundaries nor courses and distances be proven), quantity governs.

Question *a.* Is this rule followed in Mexico?

Question *b.* Does this rule apply there in locating such a grant as the San Pedro?

No. 5. The opinion assumes that the statute of Sonora for denouncing demasias, &c., was properly enforceable in Mexico to cut down the area of a surveyed grant *regardless of boundaries and landmarks proven.*

Question *a.* Is this a correct view of the law of Mexico?

Question *b.* Or does the said statute properly apply only where parties are unable to establish the boundaries of their land, and where it can therefore be applied in conformity to the rule above mentioned?

First Case No. 1001

In the Supreme Court of the United States

October Term, 1961

THE BERGMAN CATTLE COMPANY,
appellant,

No. 80

THE UNITED STATES

APPEAL FROM THE COURT IN PRIVATE LAND CLAIM

BRAND FROM THE UNITED STATES

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE RELOJ CATTLE COMPANY,	} No. 30.
appellant,	
v.	
THE UNITED STATES.	

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

On the 29th day of May, A. D. 1897, the Reloj Cattle Company, claiming to be the owner in fee of a private land claim situate in the county of Cochise, Territory of Arizona, known as the San Pedro grant, filed its petition for the confirmation of the same (R., p. 1). This petition alleges that the plaintiff is the owner of said grant, which is alleged to contain 37,000 acres in the United States, and is shown by the sketch map attached to said petition to contain 19,000 acres in the Republic of Mexico, or a total of 56,000 acres within its exterior boundaries. The petition sets up a description of said grant by courses and distances from certain natural objects, and it is alleged in paragraph 9 of said petition

(R., 4) that the survey upon which plaintiff relies is one made by one H. G. Howe upon observations taken by him from the original monuments marking the corners of the grant to prominent mountain peaks in the vicinity and to monuments on the international boundary line between the United States of America and the Republic of Mexico, and that the map of said survey made by said Howe, and which appears as plaintiff's Exhibit A, opposite record page 6, shows, as nearly as may be, the location, boundaries, and number of acres of said grant. The discrepancy between this survey and the plat thereof and the survey made by a subsequent surveyor, which was relied upon at the trial, and a plat of which is attached to the amended petition, presently to be referred to, will be apparent on an inspection by the court.

The petition further alleges that plaintiff is the owner of the tract of land by virtue of certain instruments in writing, by which it had acquired from Rafael Elias, the owner of said original grant, title to all of the property which he had therein. Upon the trial of the cause there was no denial of the allegation that the plaintiff had succeeded, at least in part, to such title, if any, as was held by the original grantee.

The petition further alleges that the grant title bears date the 2d day of May, 1833, and was duly made, executed, and delivered by José Maria Mendosa, the treasurer-general of the free and sovereign State of Sonora, Republic of Mexico, in the name of the sovereignty of the said State of Sonora, under

and by virtue of article 11 of the general sovereign decree No. 70, which was passed on the 4th day of August, 1824, by the Sovereign Constituent Congress of the United States of Mexico, which article concedes to all of the States of the Republic of Mexico the rents or revenues which by said law are not reserved to the General Government, one of which revenues is the vacant lands within the States of the Republic, thereby confirming to the States the lands hereinbefore described.

The petition further alleges that by law passed May 20, 1825, No. 30, and other decrees subsequent thereto, the constituent congress of the State of Sonora and Sinaloa prescribed regulations for the sale of these lands of the said States of the Republic of Mexico.

It is further alleged that the initiatory proceedings in the steps taken to obtain the grant title to the land was by a petition dated the year 1820 or 1821, addressed to the governor intendente, who was then and there the officer of the Spanish Government in charge of and having exclusive jurisdiction in the matter of the sales of public lands in the precinct of Fronteras, in which precinct the lands petitioned for were situated; the said petition was made and signed by one José Jesus Perez, and upon said petition it is alleged that proceedings of survey, appraisement, information of competency, and publication were taken as required by the instructions and laws of the royal ordinances of the intendente of December 4, 1786, and that thereafter on the 5th day of July, 1822, at the city of

Arispe, in the State of Sonora, the tract of land petitioned for was sold by the proper officers of the Republic of Mexico to said Perez for the sum of \$190. That on July 6, 1822, the intendente *ad interim* of the province of Sonora and Sinaloa, minister and treasurer, Ignacio de Bustamante y Velasco, on submission to him of the foregoing proceedings, made order that the said José Jesus Perez pay into the treasury the sum of \$208.01, being the sum of \$190, together with costs and charges, and that report be made of the same to the superior board of the treasury for its approval or determination.

It is further alleged that on July 7, 1822, said sale was by the board of the provincial imperial treasury, sitting at the said city of Arispe, legally, publicly, and solemnly approved and referred to the superior board of the treasury for its approval or determination; and that thereafter and within the proper time, and to the proper officer, the said sum of \$190, together with the other costs and charges incident thereto, was paid into the national treasury of the Republic of Mexico; but that the said superior board of the treasury was abolished before approving said sale, and no further proceedings were taken in the matter of the sale until October 25, 1832, when proceedings were instituted to transfer the rights and title of the said José Jesus Perez to Rafael Elias, and to have the formal title to the said lands issued to the said Rafael Elias, and in accordance therewith, as above stated, on the 8th day of May, 1833, José Maria Mendoza, the treasurer-general of the said

State of Sonora, issued to the said Elias the final testimonio or evidence of title of said San Pedro grant, and the same was thereupon duly recorded in the proper records of the State of Sonora.

The petition further alleges that the petitioner is not in possession of the original grant title of 1833, the same being, according to its information and belief, in the hands of one of the owners to that part of the grant lying in the Republic of Mexico; and that for that reason the original grant could not be presented or delivered, but in lieu thereof there was presented and filed two copies of said document in the Spanish language, together with translations thereof, as required by the rules of the court.

It is further alleged that the claim had been presented by certain grantors of the petitioner to the surveyor-general of Arizona, as permitted by the act of Congress approved July 22, 1854, and that thereupon a report had been made by R. C. Hopkins, a duly authorized agent of the United States in land-grant matters, to the effect that the expediente of the said land grant was among the archives in the State of Sonora, in said Republic of Mexico, in the proper place, in the proper archives, and on proper paper, and that all the proceedings of survey, valuation, and sale were regular, the handwriting and signatures genuine, and the certificates showing the payment of the amount at which the land had been valued, and the record of the transfer of the same between said Perez and the said Rafael Elias, and the issuance of the formal title

to the said Elias, being all found properly recorded in proper form and in the proper place among said archives of the State of Sonora.

The petition also alleges that said grant was, at the time of the treaty, located and duly recorded in the archives of Mexico, and that there is on file and of record in the office of the surveyor-general of Arizona a report by one G. C. Wharton, apparently acting specially under instructions of the Commissioner of the General Land Office, in which said Wharton reports against said land grant, and further reports that the land described therein is situate in the State of Sonora, Mexico, but that said report is not made with full knowledge of the facts and is not upheld by the facts. It is also alleged that there is a similar report on file by one Thomas Borton, apparently acting under instructions of the surveyor-general of Arizona, but that petitioner is unable to determine from said report whether it approves or disapproves the said land-grant claim. The report of said Borton was introduced in evidence on the trial by plaintiff (R., 194). Mr. Borton also testified in the case as a witness for the Government (R., 90). It is further alleged that beyond what has just been stated, the said San Pedro grant had not been acted upon by Congress, or any other competent authority of the United States constituted by law for the adjustment of land titles within the Territory of Arizona.

It is further alleged that all proceedings in the matter of said grant were regular, complete, and law-

ful, and vested a perfect and valid title in fee thereto in said grantee; that said grantee went into actual possession, use, and occupation of said grant and erected proper monuments, and that said grantee and his descendants and legal representatives have continued ever since until the present time in the actual possession, use, and occupation of the same and are now seized and possessed in fee thereof, and that petitioner is entitled to all of the lands embraced within the original survey of said grant lying within the said Territory of Arizona and the boundaries established and described therein, and that said lands are the lands embraced within the accompanying map of said grant, filed with the petition as plaintiff's Exhibit A (R., 6).

The plaintiff also alleges on information and belief that there is no person in possession of said grant otherwise than by the lease or permission of the petitioner except one E. J. Roberts, who is made a party defendant.

On May 13, 1899, plaintiff filed an amended petition, which is in effect the same as the petition just quoted from, with the exception of the description of the premises claimed. In said amended petition it is on this point alleged (R., 12): That the map and survey made by said Howe and attached to the original petition as Exhibit A was made from calls of the grant papers and from observations taken by him from the original monuments marking the corners of said grant to prominent mountain peaks in the vicinity and to monuments of the international boundary line between

the United States and the Republic of Mexico; that owing to the death of said Howe, before the completion of said survey and the filing of the amended map, one Philip Contzen made an amended map and survey, said map being attached to the amended petition and introduced in evidence as plaintiff's Exhibit 28 (R., 204). The amended petition sets out in detail the boundaries of said grant in accordance with said map and survey, giving the courses and distances thereon, and alleging the grant to contain within the United States 38,622.06 acres, as against 37,000 acres on the survey made by Howe, as shown on plaintiff's Exhibit A (R., 6). On the trial of the cause the survey relied upon by plaintiff was that made by Contzen, and the same will be fully discussed hereinafter.

The answer of the United States, filed on June 1, 1899 (R., 15), puts in issue the allegations of the petition, denying the correctness of the surveys and maps of said Howe and said Contzen, and alleges that so far from said maps or surveys being correct, said tract, whether located according to quantity or courses and distances or natural objects mentioned in said alleged title, lies entirely south of the boundary line between the Republics of the United States and Mexico, and is thus without the jurisdiction of the court.

The answer of the United States also denies (R., 16) that the claim set forth and alleged in plaintiff's petition was at the date of the treaty a complete and perfect title and pleads the bar of the land-court statute, whereby all imperfect claims not filed within two years

from March 3, 1891, became forever barred, the petition in this cause, as above stated, not having been filed until May 29, 1897.

The answer of the United States also sets up that under and pursuant to proceedings of denouncement initiated on July 8, 1880, by the predecessors in title of the Reloj Cattle Company, the Government of Mexico measured off and delineated to said persons the legal area or *cabida legal* of 4 sitios mentioned in claimant's title papers; and in the same proceedings it was adjudged that the ranch of San Pedro has no known boundary or boundaries, and thus no surplus or *demasias*, and that said 4 sitios so measured off and delineated to said persons by the Mexican Government were and are located entirely within the Republic of Mexico, and that the claim herein sued for was thus entirely satisfied and discharged by the location of said 4 sitios within the Republic of Mexico. The answer accordingly prays that the petition be dismissed and the claim rejected. (R., 16.)

The cause came on for hearing on June 1, 1899 (R., 17), at which time there was offered in evidence by plaintiff a large number of documents showing succession in title by the Reloj Cattle Company to interests in the San Pedro grant lying north of the boundary line, held by certain of the heirs of the Rafael Elias above mentioned (R., 17). As it was not disputed on the trial of the cause that plaintiff had sufficient interest in the subject-matter of the suit to invoke the jurisdiction of the court, it is not deemed necessary to recite the contents of these documents.

Plaintiff introduced as Exhibit No. 2 (R., 17) a copy of the original expediente of the San Pedro grant; said copy and the translation thereof are found in the record, at pages 106 to 129. It is contended by the United States that the translation of said expediente filed by plaintiff is in a great many respects incorrect, and in the discussion of this case reference will be had to the Spanish copy and the translation thereof presented by the United States as its Exhibits No. 2 and 3. (R., 206 and 230, respectively).

From this expediente it appears that in the year 1821 one José de Jesus Perez presented the following petition to the governor intendent:

I, Don José de Jesus Perez, a resident of this capital, before your excellency, in conformity with law, and in accordance with the royal ordinance of Campo, laws, sanctions, and rescripts that treat of the royal and abbatial lands with which His Majesty (God preserve him) protects his vassals, as perquisites of his royal patrimony, appear and state: That, whereas I enjoy some property, acquired in the military service and by my own industry, without owning a place upon which to locate and bring them together (*centruarlos*), I apply to the superior authority of your excellency (with prior permission of my father) in order that, pursuant to the provisions of the national laws *and the terms of the royal cedula of February 14, 1805, the depopulated place down the San Pedro River, situate in this province, toward the north, on the hostile frontier, close to the abandoned place of Las Nutrias*, be considered as registered, in virtue of which I protest

that I will enter into composition with His Majesty (God preserve him) and will pay the quota or cost of its purchase, the royal half annate tax, and whatever else may be necessary, for such is rigorous justice with relation to what is stated. In this understanding I pray you to issue commission for the execution of the necessary proceeding, ocular examination, reconnoissance of the ground, survey, appraisement, publication, possession, and final sale of *the 4 sitios*, which will be surveyed for me in a square or oblong figure, according to the length or extent of the land and its direction, and in these terms I pray your excellency to defer to my just petition, by which I shall receive grace. I protest costs and whatever is necessary, etc.

JOSÉ DE JESUS PEREZ. [RUBRIC.]

The italics are the writer's, and the words thus italicized will be fully discussed hereinafter, as they have a very important bearing on the case.

On March 12, 1821, the foregoing petition (R., 231) was referred by the governor intendent, for survey, appraisement, and other customary proceedings, and for citation to the adjoining owners, with instructions that when concluded the proceedings were to be reported back for further action.

On May 3, 1821 (R., 232), a promotor fiscal, appraisers, and recorder of courses were appointed by Miguel Teran, constitutional alcalde of the district of Fronteras and judge surveyer of said registry. Thereupon (R., 232) said promotor fiscal accepted the duties of the position and took the oath to properly perform

the duties of his commission (R., 233); and at the same time (R., 233) the appraisers and recorder of courses also accepted said position and took the proper oath of office (R., 234), and were thereupon duly commissioned. On the same day, the said alcalde and judge surveyor, Miguel Teran, reciting (R., 234) that there are no adjoining owners to summon, directs that there be put up public notices summoning whomsoever might be thought to have a right, for May 6, at which time, as provided by said notice, any persons having interest in the matter would be heard, attended to, and respected.

To the notice last given, one Manuel Antunes replied, under date of May 17, 1821, his communication being written from the place of Terrenate. The communication of said Antunes was as follows:

Replying to your communication of the 16th instant, I will appear personally at the place to which I am summoned, at the survey of the lands which, on account of Don José de Jesus Perez, is being made on the San Pedro River, and I will there point out the lands which I find myself in disposition to immediately register until the final proceedings of composition with His Majesty are had, and in case said survey conflicts with the lands I shall point out and have held for the space of two years with my cattle, in that event I shall enter into opposition and contest for them as may be convenient to me. God preserve you many years.

Place of Terrenate, May 17, 1821.

MANUEL ANTUNES. [RUBRIC.]

It may be remarked here that the place of Terrenate is only a short distance west of the house and settlement of San Pedro, as will be hereinafter pointed out. (See defendant's Exhibit 8, opposite record page 326.)

On May 18, 1821, said alcalde was present at the premises claimed, accompanied by the promotor fiscal, measurers, appraisers, and recorder (R., 235) and also by the said Manuel Antunes. The proceedings of that day's survey, as recited in the expediente, were as follows:

In the field, place of San Pedro, on the 18th day of the current month and year, I, said alcalde, in the presence of the promotor fiscal, measurers, appraisers, and recorders, before those in my attendance, Don Manuel Antunes having appeared in person and stated that they could proceed to the survey from the house of San Pedro down the river without any damage resulting to him in said direction, but going up the river he would be damaged, as he considered himself possessed of rights and the lands he has held included in the sitios which he expects from day to day will be adjudicated to him, to which, when stated by said Antunes and noticed by the attorney, Don Rafael Salas, the latter took exception on account of the delay that would result to the prejudice of his party by depriving him of the benefit of the water produced by the marsh (*ciénega*) which is the mother of these pastures (*cjidos*), for which reason the survey in behalf of his principal would be useless; upon which operations Antunes and Salas contended until after being

reconciled, to obviate inconveniences, expenses, and damages which might result to either of the parties in interest, they yielded and agreed to divide the water of the marsh in halves for the benefit of the farms, being obligated by this same act to preserve harmony, for they so obligated themselves, Antunes for himself and Salas in the name of his principal. In testimony of which I entered it as a minute, which the promotor fiscal and other assistants signed with me before those in my attendance, with whom I act in the ordinary manner, in default of a royal or public notary, there being none in the terms the law provides, to all of which I certify.

From said proceedings the following facts are apparent: The locus of the proposed purchase was the place of San Pedro; said Manuel Antunes, of Terrenate, had some interest in the premises sought to be purchased which he desired to have protected; he was willing that they should start the survey from the house of San Pedro *down* the river or northward (the San Pedro River running from south to north), and that he was unwilling that they should go *up* the river from the house of San Pedro, as he considered himself possessed of rights in that direction. To the position of Antunes the attorney for Perez took exception on the ground that to acquiesce in what he claimed would be to deprive Perez of the benefit of the water produced by the marsh (*ciénega*), which is the mother of those pastures (*ejidos*), and for that reason the survey in behalf of Perez would be useless, and that thereupon Antunes and the attorney for Perez contended, but finally, in

the spirit of compromise, agreed to divide the water of the marsh (*ciénega*) in half for the benefit of the farms. The relevancy of the feature of these proceedings of May 13, 1821, just recited, will be noted when the survey presented by claimant is considered. As just pointed out, the land sought to be purchased was at San Pedro; plaintiff's survey leaves San Pedro 5 or 6 miles to the south of its south boundary. The house of San Pedro, from said proceedings, was evidently an important call in the location of the grant on the ground, Antunes being willing that the land should be located from said house down the river and Perez claiming that it should be located up the river from said house. As the matter was compromised it is evident that the starting point of the land was up the river from the house. Plaintiff's survey of the grant, however, places the south boundary some 6 or 7 miles below the house of San Pedro. It is also evident from said proceeding that this initial point was arrived at by a division of a *ciénega*, a short distance above the house of San Pedro. Plaintiff's survey makes no attempt to locate such *ciénega*, and, indeed, the south boundary of said survey is a number of miles north of where said *ciénega* must have been under the record of said proceedings above transcribed.

Antunes having been eliminated from the matter, the parties proceeded to a survey, the field notes of which, so far as it was made on May 18, 1821, being as follows (R., 236):

On the same day, month, and year, being in the field and the parties in interest having

agreed, in the presence of the promotor fiscal and other assistants, I caused a monument to be placed at a rectangular corner, from which, taking the course southwest to northwest, there were measured and counted fifty cords, the last of which terminated down the river from the house, on the edge of the ford, on the bank, where I had a cross monument placed, and from there there were measured and counted fifty cords, the last of which terminated in the same valley, at the edge of a hillock (*loma*), distant three cords, where I had a corner monument placed, and from it there were measured and counted fifty cords, the last of which terminated in front of the Guachuca Mountains, where I had a cross monument placed on a rocky hillock (*loma*), and from it there were measured and counted fifty cords, the last of which terminated on a cat's-claw (*chinosa*) table-land, where I had a corner monument placed, and from there there were measured and counted fifty cords, the last of which terminated in the cañon of the Bachata (where I had a cross monument placed, general boundary and dividing rectangular corner, this side line enclosing, and in the figure of a true square, two hundred cords which make two and a half leagues); and from there, the compass being set up and taken the course northwest to southwest, there were measured and counted fifty cords, the last of which terminated in the middle of the valley of the San Pedro River, where I had a corner monument placed; and from there, on said course, there were measured and counted fifty cords, the last of which terminated just after crossing the river

at the edge of a hillock (loma), where I had a cross monument placed; and from it there were measured and counted fifty cords, the last of which terminated in the Arroyo de las Baras, where I had a corner monument placed; and from it there were measured and counted another fifty cords, the last of which terminated in a thicket of dark brush, where I had a cross monument placed; and from it there were measured and counted fifty cords, the last of which terminated on the slope of the peak, where I had a monument placed, a general rectangular corner, this measurement enclosing two hundred and fifty cords, which make two and a half leagues for its side, with which, because of being now late, this operation was suspended, to be continued the following day. In testimony of which I entered it as a minute, which I signed with the promotor fiscal, assistants, party in interest, and those in my attendance with whom I act in the ordinary manner. I attest.

On May 19, 1821, said survey was resumed and completed, as set forth in the following entry (R, 237):

On the 19th day of said month and year, in the presence of the promotor fiscal and other assistants, being in the field, at the monument at the general rectangular corner and taking the course from northwest to southwest, there were measured and counted fifty cords, the last of which terminated in a dense thicket of brush, where I had a cross monument placed, and from it there were measured and counted

another fifty cords, the last of which terminated on the Arroyo del Malpais, where I had a corner monument placed, and from it there were measured and counted fifty cords, the last of which terminated on the rise to a red table-land, where I had a cross monument placed, and from it there were measured and counted fifty cords, the last of which terminated on the same table-land, where I had a monument placed, a general boundary and dividing rectangular corner, and from it, taking the course from southwest to northwest, there were assumed to be enclosed and measured two hundred and fifty cords, which make two and a half leagues; with which operation there were located, the sides measured, surveyed, and the area determined of four sitios of land for large stock without any prejudice resulting, thanks to the concurrence of the adjoining owners, and that it may serve the purposes of the law I entered it as a minute, which I signed with the promotor fiscal, assistants, party in interest, and those in my attendance with whom I act in ordinary manner according to law. I attest.

This survey will be considered in detail hereinafter, in connection with the other testimony in the cause.

The survey having been concluded, the alcalde and judge surveyor, on May 21, 1821 (R., 237), directed that an appraisement and valuation be made by the expert appraisers previously appointed, and thereupon said appraisers, in view of the ocular inspection and reconnoissance they had made of the lands at the time of their survey, appraised the first 3 sitios at \$60 each,

and the remaining one at \$10 (R., 238). Thereupon the said alcalde and judge surveyor, reciting that the "4 sitios of land for live stock" had been appraised and valued, required the proceedings to be forwarded to the promotor fiscal, for him to deduce, according to their condition, what he considers proper to the benefit of the public treasury.

On May 22, 1821, the promotor fiscal directed the judge surveyor to make inquiry as to whether Perez had the qualifications required by law, and whether he had sufficient property with which to protect these sitios, and finally whether great advantage would result to the public treasury by their protection and settlement. Thereupon the testimony of three witnesses was taken (R., 239 and 240), and their testimony referred back to the promotor fiscal. The result of this inquiry being satisfactory to the promotor fiscal, on May 26, 1821 (R., 241), he directed the publication, for thirty consecutive days, of the appraisement of said land and provided for bids thereon, with the further provision that the final disposition and sale of the land should be at Arispe, before the provincial board of the royal treasury, presided over by the governor intendent of the province. The publication was thereupon ordered by the judge surveyor, the first of said publications being as follows (R., 241):

On said day, month, and year, I, the judge surveyor, caused Lazaro Quijada, at the sound of the drum and in clear, loud, and distinct voice, to announce: It is made public and

notorious that Don José Jesus Perez has registered the place of San Pedro, and, his petition being admitted, there were measured and located and sold four sitios of land for large stock, which were appraised and valued in the sum of one hundred and ninety dollars, in virtue of which every one who believes he has a well-founded right or desires to make a bid for the land mentioned may apply, as his bid will be admitted and his actions reserved till the day of the disposition and sale, which will be in Arispe on the day designated by the governor intendent of the province, to which end his actions and rights are reserved. And no bidder having appeared I entered it as a minute, which I signed, with those in my attendance, according to law, as I certify, and on this paper, without prejudice to the royal revenue.

Thereafter for thirty consecutive days (R., 241-248) the *pregones* took place, and no one appearing to outbid Pérez, the alcalde and judge surveyor, on June 26, 1821, transmitted to Antonio Cordero, the governor intendent (R., 248), "the proceedings of survey, ocular inspection, appraisements, and publications executed on the depopulated tract of San Pedro in favor of Don José Jesús Pérez for your excellency to make such order as may be just." The proceedings on June 9, 1821, were referred by the governor intendent to the promotor fiscal.

The matter seems to have remained *in statu quo* until June 25, 1822 (R., 249), when Francisco Pérez, the promotor fiscal of the intendency, reported favorably there-

upon and recommended that the celebration of the three customary offers be proceeded with in the capital of the intendency, the city of Arispe, in solicitation of bidders for the final sale of the said surveyed land (R., 249), and thereupon, on July 3, 1822, Intendent Bustamante ordered proceedings to be had for the celebration of the three public offers and sale of the land.

Such offers were made on July 3, 4, and 5, 1822, at the city of Arispe. The land described in the first offer (R., 250) is "4 sitios of royal land for raising cattle comprised in the place called San Pedro, situate in the particular territory of the presidio of Fronteras, surveyed for Don José Jesús Pérez, of this city, and appraised in the sum of \$190 at the rate of \$60 for the first three and \$10 for the other one." The final offer of sale or *almoneda* was as follows:

In the city of Arispe, on the 5th day of the month of July, 1822, having assembled as a board of sale in this said capital, the intendent, as president, and the members who compose it, for the purpose of making the third and last offer of the lands to which these proceedings refer, they caused many individuals to assemble, at the sound of the drum and the voice of the public crier, in the office of this intendency and Loreto Salcido to proceed to make in their presence a publication, as he in effect did, similar in all respects to the one set out in the preceding offer, with only the difference of announcing to the public that the final sale is now to be made to the highest and best bidder. In which act appeared Don José Maria Serrano,

as attorney of Don José Jesus Perez, again offering the value of the land, and the hour for midday prayer of this day having already been struck, the public crier finally said: "Once, twice, three times ~~gold~~ sold, sold, sold; may they do good, good, good, to Don José Jesus Perez." In these terms this act was concluded, the four sitios of royal land referred to in these proceedings being solemnly sold in favor of this party in interest for the sum of one hundred and ninety dollars, and in due witness thereof this minute was entered with the president and members of this board of sales, signed with the attorney, Don José Maria Serrano.

This proceeding being satisfactory to the attorney for Perez (R., 251-252), he prays that there may be issued in favor of his client "the corresponding title of grant and confirmation of the 4 sitios which said land contains," reciting that he had been prompted to appoint in Mexico a person under pay and expenses to be charged with managing the present matter at that court.

On July 6, 1822, the intendent, Bustamente, having examined the whole proceeding, admitted José Jesus Perez to composition with the imperial treasury for said royal land, and orders that his attorney be notified and informed to proceed to pay into the treasury \$190 as the principal value at which they were sold to said party in interest the 4 sitios which said tract comprises, and certain items of cost, the amount to be paid altogether aggregating two hundred and eight dollars and one grain.

On July 7, 1822 (R., 253), the provincial board of the imperial treasury approved said sale in favor of Perez, describing the land as being "the 4 sitios of royal land for raising large stock, which the place called San Pedro comprises."

On July 8, 1822 (R., 253), the sum of two hundred and eight dollars and one grain were paid into the branch of the treasury in Arispe, in the State of Sonora, the same being apparently a branch of the national treasury. No action appears to have been taken in the matter by the superior board of the treasury, and it remained as it was until October 25, 1832 (R., 254), when Ignacio Perez, on behalf of his brother José Jesus Perez, presented to the treasurer-general of the State of Sonora a petition alleging that on July 5, 1822, there was sold in favor of his brother "the land called San Pedro, situate in the jurisdiction of Fronteras," and alleging that he had lawfully exchanged the right he had thereto with citizen Rafael Elias, and requesting that inasmuch as the corresponding title to the grant had not yet been issued, he might be pleased to order the corresponding title issued to said citizen Rafael Elias as the actual owner and proprietor of the land of San Pedro.

On October 25, 1832 (R., 254-255), the treasurer-general transmitted to the governor of the State of Sonora the proceedings "comprehensive of the registry, survey, appraisement, publications, and sale of 4 sitios of land at the place called down the San Pedro River, in favor of Citizen José de Jesús Pérez." This pro-

ceeding also alleges that Pérez had shown by a certificate, forming a part of the proceeding, that he had paid into the national treasury the sum of two hundred and eight dollars and one grain for the principal value of the land and its corresponding taxes, and the treasurer-general reports that said Pérez desires the title of the land to be issued to Rafael Elías, complying at the same time with article 27 of law No. 30 of May 20, 1825, and said treasurer-general reports that he considers said proceedings sufficient, legal, and concluded with the formalities established by the laws and consequently in condition for the issue of the title asked for.

On October 31, 1832 (R., 255), Ignacio Bustamante, governor of Sonora, transmitted the following communication to said treasurer-general:

Having examined the proceedings on the lands which your excellency transmits with your note of the 25th ultimo, comprehensive of 4 sitios surveyed at the place called down the San Pedro River, in favor of Don José Jesús Pérez, I return it to your excellency for you to issue to Don Rafael Elías the corresponding title for the grant, in view of the exchange Don Ignacio Pérez, of this place, has made with him.

With the order just quoted the expediente closes.

The plaintiff introduced no copy of the *titulo*, the execution of which was authorized by the order of Governor Bustamante last quoted, and the only evidence on the record indicating that such *titulo* was issued, or the date of the same, is found in Exhibit 5 introduced by the Government, being a proceeding for

the denouncement of the overplus (*demasias*) of the ranch of San Pedro (R. 255), in which it is recited (R. 281) that "the title of grant of 4 sitios for raising large stock issued by the treasurer-general of the State in the city of Arispe under date of the 8th day of May, of the year 1833, José Maria Mendosa, in favor of the citizen Rafael Elias."

Plaintiff also introduced in evidence a copy of the *titulo* of the San Rafael del Valle grant, being plaintiff's Exhibit No. 27 (R. 197-203). The relevancy of this *titulo* as evidence is derived from the fact that the description of the San Rafael del Valle grant survey given therein as made on August 21, 1827 (R. 199), is as follows: "And running south there was measured and counted two hundred cords, the line terminating at the line of the rancho of San Pedro, granted to Don Jesus Perez; and in his name was present the administrator of said rancho with documents showing that his measurements extended to that point, the monument of which, existing at that place, being the boundary of both parties in interest." The San Rafael del Valle grant is under advisement by this court on submission at the last term as No. 229, on an appeal taken by the United States, being No. 35, present term, under the title of *United States v. Canon*.

George J. Roskrige, testified on behalf of the plaintiff (R., 18-24), that he had been a surveyor for twenty-seven years; that he had held a number of positions of trust in the Territory of Arizona. He testified that he had made a survey of what was known

as the San Rafael del Valle grant, that last above referred to, in May and June, 1891, and that said grant was situate in the valley of the San Pedro River; that the south boundary thereof was situated about 4 or 5 miles north of the international boundary line; that said grant lies between the Mule Mountains and the Huachuca Mountains, and that the the Mule Mountains come within 4 miles of the Mexican boundary line, and the Huachucas extend about a mile south of the line; that the north boundary of the San Rafael del Valle grant as surveyed by him is at a limy hill, a photograph of which was introduced in evidence and is to be found marked "Plaintiff's Exhibit 19," opposite page 368 of the record. Roskruge also testified that the monument used as locating the south boundary of the San Rafael del Valle grant was one on the left bank of the Bachata cañon, and about $2\frac{1}{2}$ miles east of the San Pedro River, and that as the San Rafael del Valle grant recites the San Pedro grant as its south boundary, he located this monument as the northeast corner of the San Pedro grant. It will be noted hereinafter that Contzen, the surveyor for the plaintiff, located this same point as the northeast corner, but that in view of the expediente in the San Pedro case, it is impossible that either Roskruge or Contzen could have been right in their assumption that this was the northeast corner of the San Pedro grant, and thus the south boundary of the San Rafael del Valle grant. Roskruge further testified that an east and west line through this alleged northeast corner of the San Pedro grant would be about $13\frac{1}{2}$ miles south of the limy hill selected as the

north boundary of the San Rafael del Valle grant, thus making the latter grant about $13\frac{1}{2}$ miles in length from north to south. This witness also produced a photograph of this alleged northeast corner of the San Pedro grant and testified that the same was on the Cañada de la Bachata, and is 5 feet square at the base, and is thrown down, but can be easily seen, and was at one time a square-built monument. This photograph was not produced by the plaintiff on the trial. Roskrige further testified that the Bachata Cañada was probably 10 or 12 miles in length, rising in the Mule Mountains and emptying into the San Pedro River, and that *bachata* is a little plant that grows in the cañada, with some berries on it, and from that it has derived its name (R., 19), but that he could not tell whether there was much or little of this *bachata* there. Witness further testified that he was taken there by two Mexicans, Concepción Elias and a man named Gonzales, who lived in San Pedro, Mexico, and had lived there when they were boys, and who told him that it was the Bachata Cañada. Plaintiff failed to introduce either Concepción Elias or the other party who gave Roskrige this information as to the name of the cañada, although Elias was present in the court room during the trial (R., 22). It is to be assumed from this fact that, while Elias was willing to tell Roskrige that this cañada bore the name of Bachata, he was not willing to swear to it, and as Roskrige's only information on the subject was derived from witnesses living at the time of the trial, and one of them actually present on the trial, but neither of whom were

produced by plaintiff, it is not believed that the testimony of Roskruge on this point has any more dignity than is usually attached to other hearsay evidence. The importance of the location of the Bachata Cañada, or Cañon, will be developed later on, but it seems proper to state at this time that the only testimony fixing the northeast corner of the San Pedro grant at this place is, first, that a stone monument was found there, and second, that the Bachata Cañada was found there. When the attention of the court is called to the fact that the alleged monument at the Bachata Cañada was simply a pile of stones, with no mark and nothing whatever to distinguish it from thousands of other piles of stones all over southern Arizona (R., 36), the attempt to give any significance thereto must fall. The other basis for ascertaining this to be the northeast corner of the San Pedro grant, that said pile of stones is located on the Bachata Cañada, also loses force when it is recalled that the only testimony on behalf of claimant as to this being a cañada by that name is the hearsay testimony of Roskruge, above given, the equally hearsay testimony of Contzen, to be hereinafter referred to, and the fact that Roskruge found some *bachata* berries in the cañada. The force of this contention of plaintiff, which is one of the principal grounds upon which it relies to establish its survey, is completely destroyed by the terms of the expediente, taken in connection with the testimony for the Government to be hereinafter referred to, which shows that the Bachata Cañada empties into the San Pedro River from the west and not from the east, and

that the cañada selected by Roskruge can not possibly be the cañada referred to in the expediente as the Bachata Cañada.

On cross-examination Roskruge testified that he also located the center monument of the San Pedro grant, the same being in the center of the San Pedro Valley and about half a mile north of the international boundary (R., 20), and that the northeast corner of the San Pedro grant was based upon the supposition that this monument selected by him was the center monument of the San Pedro grant. This monument of the San Pedro grant was photographed by Roskruge and appears in the record as plaintiff's Exhibit 20, opposite page 368. Witness reiterated in his testimony (R., 22) that the principal foundation of the San Pedro grant is the fact that he located the center monument of this grant in the United States and the San Pedro grant was mainly based upon that. Witness also testified to their being another monument about a mile and a half north of the monument taken by him as the center monument of the San Pedro grant (R., 23), and that both of these monuments, the center or initial monument, and the one about a mile and a half north of the center monument, are on the west side of the San Pedro River, and the one very nearly north of the other.

A comparison of the testimony of Roskruge as to the location of this center monument at a point about half a mile north of the international boundary with the survey made by Contzen, to be hereinafter considered, will show that the initial monument selected for the San Pedro grant by Roskruge is at least a mile

from the center monument selected by Contzen, for the latter monument, according to Contzen's map, is at least a mile and a half north of the international boundary. Indeed, as will be presently noted, from the testimony of Contzen (R., 25), the latter took the monument photographed as plaintiff's Exhibits 21, 22, and 23, as his center or initial monument, whereas Roskrige (R., 23) says that such photographs are photographs of the monument located a mile and a half north of the center or initial monument. The uncertainty of plaintiff's testimony as to the proper survey of the San Pedro grant is accentuated at the very outset by the fact that the only two surveyors produced by them identify the center or initial point of this grant a mile and a half apart from each other.

Philip Contzen was the main witness on behalf of plaintiff, and testified that he had been an engineer, draftsman, and surveyor for about nine years, and was county surveyor for the county of Pima, Territory of Arizona; that he had surveyed the San Pedro land grant about three weeks previous to his testifying, and that in making the survey he had, to guide him, the description of the San Pedro land grant as disclosed in the expediente; that he was able to read and write Spanish fairly well, and that after obtaining some data he went down to the place of Palominas or Ochoaville, where one Ashton resides, who was on the grant representing his sister-in-law, who is interested therein (R., 49), and that Ashton told him about various monuments, the principal monument about $2\frac{1}{2}$ miles west of Palominas and the monument toward the Bachata

Canada, and that after he had talked with him and had read the expediente, all the indications lead to the conclusion that the center monument was about $2\frac{1}{2}$ miles west of said place of Palominas. Witness thereupon identified the photographs of this alleged center monument, and, as above pointed out, this monument selected by him (R., 25) is a mile and a half or more distant from the center monument testified to by Roskruege. Witness testified that he took this center monument theory of locating the grant, first, because most of the surveys in Sonora were executed in olden times in that way, a position which is rendered untenable, as will be hereinafter pointed out by the plain recitals of the expediente that there was no center monument in this grant; second, because he could see by following a line toward the northeast he would come to the Cañada de la Bachata; to the southwest a forest of oak trees; and to the southeast a peak of the San José Mountains. It seems proper to add at this point that if the accuracy of Contzen's survey depends on the location of the Bachata Cañada toward the northeast, its unreliability is demonstrated by the uncertainty of such location, even upon plaintiff's testimony, as above pointed out; and if upon a "forest of oak trees" toward the southwest, it seems sufficient to say that there is no such call in the expediente, the expediente call on this being "*un monte espeso*," which is properly translated, a dense thicket of brush. So far as Mr. Contzen's southwest line depends for its direction on the existence of an oak forest, it has therefore a purely imaginary basis. Contzen further testified

(R., 25) that looking to the northeast from his center monument he could see more or less the place where the Bachata Cañada is; toward the southeast he could see a peak, and toward the southwest he could see the imaginary oak forest just referred to. It may be here remarked that so far as the location of the peak is concerned there is no difference between the Government and the claimant, the peak referred to evidently being the one in connection with the San José Mountains, lying to the east from the settlement of San Pedro. Witness further testified that he had the expediente with him in the field, and that in response to the initial call (which is for the erection of a *corner* monument and square) he assumed this to be the center monument (marked on his plat "center monument"). This versatility which enabled the surveyor to assume the corner monument to be the center monument is worthy of comment at the very outset of the consideration of his survey.

The witness then goes on to testify that he went northeast from this center monument (disregarding the call of the expediente, which is unintelligible), and at a distance of 4 miles he came to a stone monument right close to the river, that monument being about 10 feet long and about a foot high (R., 26), and that this course was toward the Bachata Cañada. A reference to the expediente, however, will show that upon this course, running toward the cañada of the Bachata (R., 236), the river was encountered at the end of 50 cords, and thus at a distance of only about a mile and

a quarter from the initial point. As Mr. Contzen, according to his testimony just quoted, however, did not encounter the river until he had gone $4\frac{1}{2}$ miles, a discrepancy between his survey and the expediente is developed, which can be accounted for only on the ground that his survey is incorrect. Contzen further testified that this monument accords with the call of the expediente, which is a monument on the bank of the ford at the falls, and that at this point he found said falls or rapids mentioned in the expediente. The purely imaginary character of this location is shown in the fact that there is absolutely nothing in the expediente, as hereinafter pointed out, about "falls." The word *caída*, translated by claimant as "falls," means bank (R., 236.) Further, Contzen, according to his testimony, went to the next monument, which he found right close to the valley near a hillock. It will be seen from his plat (plaintiff's Exhibit 28) that this monument, as well as the last one, is some distance off from his line running from said monument to the Bachata Cañada. From there he ran, according to said plat, about half a mile and found a very small pile of rocks, which he seemed to take as the end of the third call of the expediente. The discrepancy between the expediente, which makes 50 cords, or about a mile and a half, between these two monuments, and Contzen's survey, which makes only about half a mile, is noticeable. It is also to be noted that the expediente makes this call end in front of the Huachuca Mountains, which would indicate that

such termination was on the west side of the river, the Huachuca Mountains being on that side. If this monument had been located by Contzen the description in the expediente would have been in front of the Mule Mountains, which form the natural boundary to the east of the river. Contzen locates the edge of the brushy mesa, which is the termination of the next call, some distance to the south of his line (R., 28). When it is recalled that the testimony shows that all this is mesa country on both sides of the river, the fact that Contzen was able to find such a mesa with a pile of rocks on it a quarter of a mile east of his line would not seem to strengthen any inferences as to the correctness of his survey. Passing this last monument some distance to the north, Contzen came to the monument on the bank of the Bachata Cañada, which he describes to be 6 feet base and 2 feet high. The uncertainty of plaintiff's testimony establishing this as the Bachata Cañada has already been discussed, and when it is noted that outside of the Bachata Cañada as an object giving direction to this line, there is absolutely nothing to control its direction or to locate it except some miscellaneous piles of stones located off the line and at intervals and distances conflicting directly with the expediente, and also the existence of "rapids" or "falls," when the expediente has not the slightest reference to such natural object, it is not believed that the court will consider a line so run as worthy of any consideration, even if the terms of the expediente did not, as will be presently pointed out, absolutely pre-

clude the idea that this grant was located from a center monument.

At the conclusion of this first course Contzen went back to his so-called center monument and started on a course to the slope of a peak in the San José Mountains, being a southeast course. It is difficult to see what justification the expediente affords him for going back to the center. The expediente at this point says: "From this point there were measured and counted 50 cords, the last of which terminated in the cañon of the Bachata, and *from there* the compass was set up," etc., "for the new course." The Spanish for "from there" is *de ahí*, and the only rational construction of such language is that the new course was started from the point where the old course terminated. Instead of doing this, however, Contzen, when he reached the termination of his old course, goes back over that line a distance of 8 miles to find the starting point for his new course. Following this new course toward the southeast from the center, the first monument found by Contzen was a pile of stones at a distance of about 2 miles from his center monument. The expediente makes the distance about a mile and a quarter, so that the location of this monument does not agree with the expediente. The next monument he found is about a mile from the last monument (plaintiff's Exhibit 28), and is, according to Contzen's map, at least a half mile from the river. As the expediente says that this monument was put up just after crossing the river, the discrepancy is quite apparent. Contzen found an arroyo about 2 miles farther, which he assumes has the name

of "las barras," as given in the expediente, because there is a good deal of switches there (R., 27). As the Government testimony shows that the whole country is covered with that kind of brush, the name that Mr. Contzen gave to this arroyo, to make it conform to the expediente, could as well be given to any other arroyo on that side of the river; and there is not even a pile of stones marking this as being the proper course for that line, since Contzen admits (R., 27) that he did not find any monument. Contzen's next measurement on this course ended in a black mound, where he found a pile of stones. The expediente, however, has no such call as a black mound, the description given there (R., 236) being a thicket of dark brush. Continuing on this course, Contzen came to a descent of a *picacho*, or peak, where he found an old monument. His map (plaintiff's Exhibit 28) shows a number of prospect holes in this vicinity, indicating that mining operations had been carried on there, which fact may account for the never-failing pile of stones that he found in running his lines. Just at this point may be noted one of the strongest facts against the correctness of Contzen's survey, which is that the Cañada de la Bachata and the slope of the peak are placed by him on the same side of the river. If, as contended for by the Government, this was a survey by exteriors, these two objects could not possibly, under the terms of the *expediente*, be on the same side of the river, for the reason that in running from the Cañada de la Bachata, the end of the first course, to the slope of the peak, the end of the second course, the *expediente* (R., 236) says that

the line crosses the river. It requires but a glance at the map filed by claimant (plaintiff's Exhibit 28) to see that a line connecting the Cañada de la Bachata, as established by them, and the slope of the peak, the position of which is undisputed, would not go within several miles of the river at any point. Since the slope of the peak is undoubtedly on the east side of the river, the only solution of this difficulty is that the Bachata Cañada is on the west side of the river, and therefore not at all as located by plaintiff. The probable location of this Bachata Cañada, as being identical with the gulch coming out of the Huachuca Mountains and joining the San Pedro River Valley at a point some distance below the international boundary, will be hereinafter pointed out in connection with defendant's Exhibits 8, 9, and 10 (R., 326).

Having reached the end of his second course at the slope of the peak, Mr. Contzen ignores the terms of the expediente (which says that at said peak the original surveyor placed "a general rectangular corner," and that on the next day, "being at the general rectangular corner," he started the new course, etc.), and goes back to his center point to start the new course instead of starting it from the slope of the peak, as plainly specified in the expediente. Measuring along this course from the center, at a distance of a mile and one-third, Contzen found a small monument in an oak forest, and this, he says, practically corresponds to the description given in the expediente. In view of the fact that the expediente says nothing

about "an oak forest," but uses the the words *un monte espeso*, which means a dense thicket of brush (R., 237), and that Contzen (R., 29) says that this oak forest was not a very dense one, it will be seen that the assumption upon which the surveyor proceeded in adopting this so-called "oak forest" as controlling his line is entirely without foundation in the expediente. Going about 2 miles farther, Contzen encountered an arroyo which he says had all the evidences of the Arroyo del Malpais, the natural object named in the expediente. It will be noted that he does not testify that this arroyo bears that name, and apparently gives it that name only because it is very rocky, a characteristic of all the other arroyos in that vicinity. This arroyo which he selected as fitting the expediente is, it is to be noted, at a distance of 2 miles from the last monument, when the expediente call makes it only a mile and a quarter. Continuing his survey and running about a mile and a half farther, Contzen came to the slope of a red table-land, but failed to find any monument, and he terminated this course by running about a half mile farther and stopping at a small pile of stones about 4 feet at the base and a half foot high. It will be noted that the distance between these last two monuments is less than half a mile, whereas the expediente makes it 50 cords, or about a mile and a quarter. At the end of this line Contzen goes back again to his center point and runs a line to the northwest, terminating at an old stone monument measuring 10 feet at the base and a foot high (plaintiff's exhibit

28). This feature of his survey especially illustrates its entirely visionary character. At the conclusion of the third course the surveyor says that he placed a general boundary and dividing rectangular corner (*esquina*) and "from it" (*desde ella*) he measured the next course. The language used, and particularly the gender of the Spanish *ella*, shows beyond question that the fourth course was run from the *esquina* corner or monument, that word in Spanish being feminine and the pronoun, which is *ella*, referring to it. Contzen, however, goes back to the center (*centro*), which is masculine, and runs northwest to a pile of stones, although the expediente (R., 237) plainly shows that this course was not run at all and that no monument was placed at the end of it, the words of the survey being "from it * * * there were assumed to be inclosed and measured 250 cords, which make $2\frac{1}{2}$ leagues." On claimant's theory of the survey such a description is absolutely senseless, since it leaves the northwest corner of the grant entirely unprovided for. On the Government theory, however, of a survey by exterior boundaries, this makes an entirely complete survey, since, in running by exteriors from the fourth corner back to the starting point, there was, of course, no necessity to provide a monument at the end of that course, since it came back to the initial monument. Contzen admits (R., 41) that the last course of 250 cords "was measured to no monument," that he could conceive of no reason under his theory of the survey why they did not put up a monument at the end of it, but that on

the theory of a survey by exterior lines, there would be no necessity for such a monument. He further testified (R., 27) that the center and initial monument taken by him was one measuring 16 feet at the base and three feet high, and was a pile of stones of considerable prominence. It may be here noted that it is exceedingly peculiar that the center monument, forming so important a part of the description of the survey, is nowhere mentioned in the expediente. Contzen testifies (R., 30) that there are ruins of old adobe houses at Palominas and that the number of acres included in the survey of the San Pedro grant, in the United States, was 38,622.6 acres, and in Sonora 17,509.7 acres.

On cross-examination Contzen testified that he was down on this grant twice, the first time four days and the second ten days; that he had never lived in the San Pedro country, and that his purpose in going down was to make the survey under employment, and *that he ran the lines as they were shown him* (R., 32); also, that he did not pretend to have any special technical knowledge of the Spanish in these grant documents, and that the translation he had with him on this survey was that tendered in evidence by plaintiff, the incorrectness of which, in many essential respects, has been already in part pointed out. He admitted that the expediente could be construed in two ways, either as a survey from a center or by exterior lines, but that in making the survey he was controlled by the fact that the expediente says that the grant was "centered and headed." On being asked to indicate the word

which says that the grant was centered, he pointed out the word *sentruados*, but admitted that he had never looked in a dictionary with a view to determining its meaning, but that he would not take it to be the same word used in the beginning of the petition for this grant (R., 231). On further cross-examination he was asked as follows (R., 33):

Q. And if there was nothing in this expediente from beginning to end outside of this to show any center was intended, you would still feel that it means centered, would you?

A. No, sir.

Q. What else is there in the expediente, then, that shows there was a center to this?

A. There is nothing to show whatever.

Q. The only thing that has guided you is the topography outside of this, then, and outside of this one word there is nothing in the expediente to show that there was a tract laid off from the center?

A. No, sir.

Witness further admitted (R. 34) that where these Spanish grants were laid off from a center they were generally laid off to the cardinal points, but that he did not know of any instances where these Spanish grants were laid off without any center. For an instance, however, of such a grant the attention of the court is called to the terms of the Nogales grant (*Ainsa v. United States*, 162 U. S., 208).

The surveyor further testified as follows (R., 34):

Q. Did you ever go over the Spanish with a view of determining from the Spanish as used

just what was meant as to there being a center or what was meant?

A. *It appears it was surveyed from an exterior point.*

Witness further testified that he would take such exterior starting point to be close to the river somewhere, but that he could not locate such on his map, and did not, as a matter of fact, locate it. He further testified (R., 34):

Q. The expediente says you are to start from a point on the exterior?

A. *Yes, sir; it appears that way.*

He further testified (R., 35) that this tract surveyed by exteriors of 200 cords to the side would make 4 sitios in the square, the amount granted, but that running said measurement of 200 cords northeast, southeast, northwest and southwest and connecting the termination of said lines, the theory adopted by him would make a grant of about 8 sitios, thus establishing that the Government theory of the method of the survey of this grant conformed to the quantity granted; whereas the plaintiff's theory doubles that quantity. Witness further admitted that his survey did not include the ranch of San Pedro, but left it 5 miles to the south (R., 35), and that he did not go down to San Pedro at all, but confined his investigation to the country north of the international line. He also testified (R., 37) that he did not know why the monuments mentioned in the expediente as being called cross monuments were so called (R., 43), and why the corner monuments named

in the expediente were so called. The testimony of Mr. Flipper, on behalf of the Government (R., 54), which will be presently considered, shows that the words "cross monuments" and "corner monuments," as used in the expediente, have a clear and distinct meaning on the theory of a survey by exterior lines, but have no such significance if this be conceded to be a survey from center. This is illustrated on defendant's Exhibit 10 (R., 326), when examined in connection with Mr. Flipper's testimony. Contzen further admits (R., 37) that the Spanish words used at the end of each course mean from the monument at the end of each course, and not from a center; and he admits that he did not go down below the international boundary with a view of attempting to fit the calls of the expediente to the natural objects in that portion of the country. Upon his attention being called to the monument at his north-east corner, which is described in the expediente as being a general boundary and dividing rectangular corner (R., 236), he admitted that there was no line converging at that monument with another line and making a right angle there.

Being further questioned, Contzen testified as follows (R., 38-39):

Q. After he does that, what is the Spanish as to what he does? And in the figure of a true square, 200 cords, which make $2\frac{1}{2}$ leagues, what is the Spanish from there?

A. *Desde ahi.*

Q. And what does that from there mean?

A. It means from that monument.

Q. In other words, it means from the monument at the Bachata cañon.

A. Yes, sir.

In view of the fact that in making his survey Contzen did *not* run the second line from the monument at the Bachata cañon, but ran it from the center monument, it would seem that there was a great discrepancy between his theory as to the meaning of the expediente and his practice in putting that expediente into effect by his survey. This is further shown by his testimony (R., 39), where he says that the definition he gives of the word *sentruados*, as meaning centered, conflicts with what he has just stated as to the second course starting, under the terms of the expediente, from the monument at the Cañada de la Bachata.

Contzen also testified (R., 41):

Q. Now, where he says after he ran from the center monument down here to the southwest corner, he says from there he took the course from the southwest to the northwest; what is the Spanish of "and from it"?

A. *Y desde ella.*

Q. What is the gender of the Spanish *ella*?

A. It refers to a female; it is feminine.

Q. What do you think it refers to there, from it?

A. It means from that monument.

Q. The last monument established which was down here?

A. Yes, sir.

Q. Did you run the next line from it; did you do that?

A. I did not; every time I returned to the center monument.

Q. There is nothing to indicate that you should return to the center?

A. No, sir.

Upon the question of the last course run by Contzen, being that to the northwest, and the direction of which is controlled solely by the old stone monument indicated on Contzen's map (plaintiff's exhibit 28), the following extract from the testimony of Contzen is instructive (R., 41):

Q. This last course of 250 cords was measured to no monument?

A. No, sir.

Q. Can you conceive any reason why they did not put up a monument at the end of that?

A. I can not.

Q. Suppose you describe a perimeter of a tract of land measuring such a distance and such a direction and come back to the starting point, would there be any necessity for it?

A. No, sir.

Q. You would have a boundary which is there already when you come back?

A. Yes, sir.

On cross-examination Contzen testified (R., 42) that he could not take the calls of the expediente and lay off a square piece of land because he could not make it fit.

It may be here again recalled that Contzen (R., 40) distinctly stated that he did not go down to San Pedro, or indeed into Mexico, with a view of finding the objects named in the expediente, thus ignoring the very

place at which it would be possible to locate this grant by finding the natural objects named therein.

On redirect examination Contzen further testified as follows:

Q. Now, regarding the meaning of these different words *desde ella*, will you examine the expediente and see whether or not the same word is used constantly in that expediente?

A. It differs.

Q. Does not the word *desde* mean from there?

A. Yes, sir.

Q. And generally it means from the place?

A. Yes, sir; it means from there; from the place

Q. There is nothing in the expediente that it means from a certain monument—to indicate that it means from a monument, is there?

A. No, sir; *but I should infer that it means from the monument.*

Q. However, you drew that inference simply from the context?

A. Yes, sir.

Witness further testified (R., 43) that no one selected the center for him, but that he selected it because he adopted the center monument theory, and, taking the topographical features into consideration, that that was the only one he could adopt. It is to be again noted that the only topographical features examined by Contzen were those north of the line, and on his recross-examination this is still further developed (R., 45), where he reiterates that he did not examine the topographical features around San Pedro and did not go to the place

called Las Nutrias, which, it will be recalled, is described in the expediente as being close to the tract petitioned for and granted.

Witness Horace H. Cobb, examined on behalf of plaintiff, testified that he was a resident of Fort Worth, Tex., in the land and mortgage business, and had gone out on the land in question with Mr. Contzen at the time of his survey; that they found the center monument, which was a very large, very well built monument, and apparently very old, and went around the several calls of the expediente and located them. It does not seem necessary to review the testimony of this witness in detail, as it is simply a repetition, to a large extent, of the testimony of Contzen as to observations on the premises, carrying with it the same erroneous assumptions as to the method of making the survey, the existence of rapids or falls, when none are mentioned in the expediente, and similar errors which have been heretofore noted. Mr. Cobb's testimony is perhaps a little more positive than Mr. Contzen's on many points, due in all probability to a more imperfect knowledge of the facts. This is illustrated by his testimony (R., 47), in which, describing the pile of stones shown on Contzen's map (plaintiff's Exhibit 28), about a mile southwest of the alleged Bachata Cañada, he speaks of such monument as "possessing unmistakable signs of being a landmark." It is not believed that anyone possessed of any familiarity with southern Arizona and the abundance of piles of stones found all over that country, would be willing to swear that a given piles of stones, very old and fallen down, possesses

“unmistakable signs of being a landmark,” simply because old and fallen down, especially when such pile of stones is located as was this one—a quarter of a mile from the line. The witness testified that the Cañada de la Bachata, as identified by them, was a large cañada, and also that the corners selected by them were the only ones that would answer the calls of the expediente. As Cobb, like Contzen, failed to go into Mexico, in the vicinity of San Pedro for the purpose of locating this grant, his inability to locate it, except by the corners he identified, does not possess even the slight weight attached to negative evidence. On page 49 of the record Cobb described with considerable vividness, “the rapids in the river” and the geological formation which admits of there being rapids at this point of the river. This portion of the testimony of the witness would be enlightening were it not rendered ludicrous by the fact already pointed out, that there is absolutely nothing in the expediente about rapids in the river. It is to be regretted, perhaps, that the terms of the expediente eliminate from the landscape something so beautifying as *water falls* and when properly translated substitute in their place something so prosaic as the *river bank*.

Mr. Cobb further testified that the center monument chosen by them was conical in form; also that in his examination of this grant he was convinced by these monuments and the calls of the expediente that they had properly located it. Upon the subject of monuments he was asked as to whether he had ever been informed of the existence of miner's monuments and

Indian monuments all over that section of the country, but disclaimed any knowledge thereof.

In addition to the testimony of the foregoing witnesses, plaintiff proved the death of H. G. Howe and attempted to offer in evidence, as plaintiff's exhibit 24, two reports made by him to plaintiff's attorney of the survey of this grant (plaintiff's exhibits 24 and 26, R., 174-177). This testimony was received subject to the objection of the Government that it was inadmissible, being a mere private report made to parties in interest and without opportunity of cross-examination (R., 52). These reports by Howe are so clearly inadmissible that they will not be discussed beyond calling the court's attention to the fact (R., 176, 177) that Mr. Howe also found "rapids" in the expediente, when none existed, that these nonexistent rapids were a controlling feature of his survey (R., 178), and that the best he could say of the northeast corner was that he went to the monument on the south side of the wash "supposed to be the Bachata Cañada." Mr. Howe also says (R., 178) in his report: "It has been claimed by some that this grant laid entirely south of the international line. This is an impossibility, for what was known as the San Pedro custom-house claimed to be the San Pedro grant; there is no river and no Huachuca Mountains to stand in front of." It is difficult to see how the absence of a river could operate against the theory that the grant was entirely in Mexico, the San Pedro River extending for miles south of the international line, and so far as the comment that there are no Huachuca Mountains

south of the international line for the monument named in the first course of the expediente to stand "in front of" is concerned, it seems sufficient to refer the court back to the fact (R., 18) that the Huachucas run a mile south of the line, according to Roskruge, and according to Contzen (R., 44) monuments could be located south of the international line and still be in front of the Huachuca Mountains.

On behalf of the Government Special Agents W. M. Tipton and H. O. Flipper, who made personal examination of the country here involved, were examined, as also was Gavino Ariega, a Mexican living in that vicinity, and Thomas A. Borton, who, as hereinbefore noted, made an examination of this grant on behalf of the surveyor-general's office.

Mr. Flipper testified (R., 54) that he has been a practicing engineer since 1877, and had been engaged in the survey of public lands in the Republic of Mexico from 1882 to 1893, having made surveys in nineteen of the twenty counties of the State of Chihuahua and in all but four counties of the State of Sonora; that he had examined expedientes and records at Guaymas, Hermosillo, and Chihuahua, and that he understood Spanish—reading, writing, and speaking it. He testified that his first acquaintance with the San Pedro grant was in 1886, and that subsequently he had examined the expediente at Hermosillo and also at Guaymas, and had secured from the latter place a copy of the expediente of denouncement of the *demasias* of the grant of San Pedro offered in evidence as defendant's Exhibit 5 (R., 255). He testified that he visited the

tract of San Pedro again in April, 1899, and that between 1886 and the present time he had had occasion to visit there frequently, it being only 60 miles east of Nogales, where witness lives; that his visit to the San Pedro grant last April was for the purpose of making an investigation of the grant, and that on such visit he became acquainted with the ranch of San Pedro (R., 56), and that this settlement is the only place on the San Pedro River that has that name. Witness also testified that he was acquainted with the location of Las Nutrias, and that the ruins of said settlement is south and west of the ranch of San Pedro. Witness then gave in detail (R., 56, 57) the result of his observation as to the location of this grant based upon his visit to the country, having the expediente with him and examining in detail the natural objects named therein. Without repeating in detail all that is stated by Mr. Flipper, the following points in his testimony will appear particularly pertinent to the issues in this case:

After calling attention to the fact that the courses named in the expediente are all impossible, he gives his interpretation of the expediente, which is substantially that disclosed by the Government translation found on record, page 235, and heretofore discussed. From Mr. Flipper's interpretation the grant survey started from a point above the old house of San Pedro and the lines were run around the exteriors thereof, finally returning to and closing upon the initial monument. Mr. Flipper explained the meaning of the words "cross monument" and "corner monument" as,

used in the expediente, and it will be noted from his testimony in connection with the plat used therewith, and introduced as defendant's exhibit 10 (R., 326), that these words lose their significance entirely upon the theory of a center survey, but upon the exterior-survey theory they have a relevancy and a significance that is readily apparent to anyone who is familiar with the Mexican system of surveys. Mr. Flipper (R., 58) also testified that, so far from there being anything to support the theory of the existence of a center monument, there is not a single word in the expediente that sustains that theory; that the word *sentruados*, which apparently has misled the plaintiff in the matter, does not mean *centered*, as contended for by them, but means "*area determined*" (R., 237). Mr. Flipper then gives in detail the features of the expediente, which show that this grant could not have been surveyed from a center point (R., 58); that the starting point is designated in the expediente as a rectangular corner and general outside corner, which would be absolutely inappropriate to a center initial point; that from this point the surveyor completed his *side line*, which last expression in the expediente shows clearly that it was not surveyed from a center. Mr. Flipper points out in connection with the map, defendant's exhibit 10 (R., 326), that when the surveyor arrived at the point B, which is the end of his first course, the translation shows that he ran his next course from point B, and not by going back to the center; and that when he reached point C, the Spanish clearly

indicates that he ran his next course from that point to D, and not by going back to the center, and that from point D to starting point no measurement was made at all, but the surveyor simply closed his figure by going back to the initial monument. He also points out the fact that the original survey was evidently to start from a certain *cienega*, which was near the junction of the Arroyo de Las Nutrias with the San Pedro River, and up the San Pedro River, from the San Pedro house, about at the place marked "N" on said defendant's exhibit 10. Witness testified that about 2 miles above the ranch at San Pedro, being to the south thereof, there is such a *cienega* as is described in the expediente (R., 62); that such a *cienega* was there when witness was there in 1886, and that there are no other *cienegas* along the road between this *cienega* and the international line, and that the old place of Las Nutrias is also in this vicinity and about 2 or 3 miles from San Pedro. Thus, by the testimony of Mr. Flipper, the place of Las Nutrias, and the *cienega*, both of them vital calls in the expediente, are shown to be some miles south of the survey as made by plaintiff, which fact shows that said survey is absolutely incorrect. Mr. Flipper thereupon (R., 60-61) takes the calls of the expediente in detail and shows that by starting at a point in the vicinity of "A" on his map, defendant's Exhibit 10, it would be possible to lay off this grant so as to give due regard to these recitals as to its initial point, and at the same time to go to the various natural objects named in the

expediente as those to which the original surveyor went. In the course of his testimony (R., 61) he calls attention to the fact that there is nothing whatsoever about rapids, the Spanish word *caida* used there meaning the descent of the slope of the river bank. He testified (R., 62) that at the end of the distance indicated on the first course, ran approximately as indicated on defendant's Exhibit 10, there is a cañon or cañada at the end of Huachuca Mountains emptying into the San Pedro River, being a very broad cañada some 8 or 10 miles in length, and having an old monument at the place marked "B." Witness further testified that upon coming up this cañada for some 6 or 7 miles he found therein the bush named bachata. Witness then calls attention to the fact already referred to that in going from the Bachata Cañon to the slope of the peak named in the expediente it is necessary under the terms of the expediente to cross the river, and he describes the natural condition existing on such a course and shows (R., 63) that there are located along such a line all of the natural conditions, which would comply with the terms of the expediente, among them mesas, thickets of dark brush, and finally the slope of the peak. Continuing, witness describes the conditions existing on the third course and shows that a line as indicated by C-D on defendant's Exhibit 10 would encounter natural objects such as are described in the expediente, including *malpais*, mesas, and also red table-land (R., 64). Referring to defendant's Exhibit No. 4, which is a proceeding in

1886 under the Mexican Government, to segregate the legal area of this grant from the *demasias* or excess, and which will be hereinafter considered, Mr. Flipper testified that he found the old monument which constitutes the south center of the survey of the *cabida legal*, made under the authority of the Mexican Government and shown on the map opposite (R., 368), and being the same as the point X indicated on this defendant's Exhibit 10. Mr. Flipper thereupon gave the result of measurements from this old monument at X to the old house of San Pedro, showing the monument to be about a mile and eight-tenths south of the said house and to be 8.86 miles south of the monument No. 98 on the international boundary and 5.82 miles south of the Bachata Cañon, as contended for by the Government. These measurements are shown on defendant's Exhibit No. 7 (R., 336), as is also the old monument of the Bachata Cañon on the west side of the San Pedro River.

The Government also offered in evidence defendant's Exhibit No. 8, opposite record page 326, being a map showing the original location of the San Pedro grant, and in connection with Mr. Flipper's testimony (R., 56), showing the location of the place of Terrenate, which it will be recalled was the home of Antunes, mentioned in the expediente; and also the location of the *ciénega* or marsh; the ranch house of San Pedro, and the cañada in which *bachata* was found. It was also pointed out by Mr. Flipper that the place of San Pedro is a ranch house at which the Eliases, the descendants of the original holder

of this grant, have resided for many years and now reside. If the San Pedro grant is located as contended for by plaintiff in this case it leaves far to the south the ancestral settlement in which the grantees and their successors have here held their principal possession. Mr. Flipper also calls attention to the fact (R., 67) that the piles of stones, which have been so frequently referred to, exist all over that section of country and over the entire north end of Sonora, and that the Indian tradition as to these piles of stones is, that they were places that marked roads and trails, and to some of them a certain mystery was attached. On cross-examination (R., 69) Mr. Flipper points out that the words in the Spanish of the expediente distinguish the corners indicated by letters A, B, C, and D on defendant's Exhibit 10, from interior corners such as M and E; those first named being rectangular corner monuments and the others being simply monuments and the former meaning corners at which lines meet at right angles, a definition which is absolutely inconsistent with any idea other than that of a survey of the grant by exteriors. Mr. Flipper (R., 72) disclaims for his map (defendant's Exhibit 10) any pretension that it represents the grant as actually located originally, but that such lines simply represent how the grant might be located so as to conform to the expediente, both as to initial point and as to including the place of San Pedro, and as to going to natural objects which would fit the expediente more closely than those located by the plaintiff (R., 76-78).

Gavino Ariaga testified (R., 79) that he was 60 years of age; lives at Santa Cruz and had known the San

Pedro country and settlement all his life, and had been there first when he was 15 or 16 years old, and that San Pedro then was where the ranch is now and at the place where José Maria Elias and Manuel Elias now reside, and that there is on the San Pedro River no other place of San Pedro or old house of San Pedro; and that there were, when he first knew the country, no houses or ruins of houses at Palominas or Ochoaville, or at any other point on the San Pedro River, except at said old ranch of San Pedro, and that he had never heard of any cañon on that river called the Bachata Cañon. On cross-examination witness testified (R., 84) that he had been out to this country perhaps as many as fifty times, and (R., 89) that the only cienega he knew along the valley was near Las Nutrias, and that he knew of no cienega up the river from Palominas.

Thomas A. Borton testified on behalf of the Government that he was a practicing attorney at Tucson and that in June, 1887, under written instructions from the surveyor-general, he had made an examination of this grant, being five days at the ranch of the company owning the grant; that in response to inquiries the only monument that was shown him by the parties at interest there, who were the predecessors in interest of the present plaintiff, was a large one about $2\frac{1}{2}$ miles a little south of west of the ranch house, which said parties at interest "thought was one of the monuments of the grant" (R. 91); that he visited the slope of the peak referred to in the title papers and found no monument there, but found the post of the survey of the San Rafael

del Valle grant (evidently placed there by the surveyor who made the provisional survey of that grant for the surveyor-general of Arizona). Witness testified that the parties took him across the river in a northeasterly direction and pointed out a few stones on the sand which "they thought might be one of the monuments of the grant" (R., 92), and said parties admitted that they themselves did not know of any other monuments at that time." Witness further testified as follows (R., 92:)

Q. Was there any other natural objects besides this peak that they were able to show you?

A. This cañon Bachata, they did not know where it was at that time.

Q. As the result of your investigation for these four or five days, together with the expediente, what conclusion did you come to as to whether or not this grant was within the United States?

A. I came to the conclusion, and I think so stated in my report to the surveyor-general, that it could not be located within the United States, that is, that the tract described in the title papers that I had, according to the calls and otherwise, could not be located within the United States.

Q. Did the calls of the expediente fit this Bachata Cañon, or at least this place that you subsequently claimed was the Bachata Cañon?

A. It was named in the expediente, but nobody down there knew anything about it, and I did not know where it was then.

Witness further testified that he then went down to locate the grant in Mexico and called upon Don Man-

uel Elias to find out what he knew about this grant, and was informed by Mr. Elias who, it will be recalled, is one of the owners of this grant, on the Mexican side, that he had heard from his father and their fathers that they had owned the land where he was living, and that they called it San Pedro, and that there was pointed out to witness the cienega, which is located between a mile and a mile and a half in a southwesterly direction from the little settlement of San Pedro (R., 93).

On cross-examination witness stated that he had made a report of this examination, which was thereupon presented in evidence as plaintiff's Exhibit No. 27 (R., 193). Said report agrees entirely with the testimony of Mr. Barton, and it will be noted therefrom (R., 196) that he therein states that the field notes of the survey of the San Pedro grant would fit "at most any point along the San Pedro River for a distance of 25 miles," and probably more, as witness explained on the trial (R., 92), by leaving out the cienega. Witness on cross-examination further testified as follows (R., 94):

Q. Do you know where the Cañada Bachata in Sonora is?

A. I think I know where it is. The Cañada Bachata is a small cañon running southeasterly from the Huachuca Mountains.

Q. When did you get that information?

A. About three weeks or a month after I made that report.

William M. Tipton testified on behalf of the Government that he was special agent for the Court of Private Land Claims (R., 97), and plaintiff's attorney admitted Mr. Tipton's qualifications as a surveyor and a Spanish scholar. Mr. Tipton testified that he had examined that portion of the expediente pertaining to the survey of the grant, and had not been able to find in the expediente anything to indicate to his mind that the grant was surveyed from a center point, but had found in the expediente that it was surveyed in a different way (R., 98). He explained that his conclusion that the grant was surveyed by exterior lines was based, first, upon the fact that there is no statement in the expediente that the survey was made from a center point, and, second, that the description of the grant given in the expediente shows that the form given to the survey was substantially that of a rectangular figure. He called attention to the fact that in the description the first corner that the surveyor established, which was at the end of his first course, Spanish words are used that mean that the monument he established was a monument to mark a point at which two lines were to meet each other at right angles, and that at the termination of his next course he established another monument to mark a right-angle corner, and at the conclusion of his third course he established another right-angle corner, and thus considered the survey as concluded and measured, without actually running his line from the last corner to the initial point. He called attention to the fact

that at the end of each one of the lines or courses the surveyor describes that he starts from the end of that line to run his next course, and there is no intimation that he returned to the center point to begin another course, but that the statement of the expediente is altogether to the contrary. (R., 99.) He calls attention to the fact that the words "this side inclosing, and in the figure of a true square" as used in the expediente, has a meaning, if the survey be considered one by exteriors, but is entirely without meaning if it be construed to mean that the surveyor went back to a center point to run each course. Mr. Tipton also calls attention (R., 99) to the Spanish words "*y desde ella*," used at the end of the third course, and which can have no other reference than to the word "*mojonera*," which is the monument at the conclusion of that course. He also calls attention to the Spanish word "*cavescados*" (R., 100, 104, 105), which means that the side lines of the tract were run and could not apply to a survey such as Contzen's, for the reason that no side lines were run in that survey. Attention is also called by the witness (R., 100) to the fact that the word "*caida*," which plaintiff has consistently considered as meaning rapids, does not mean that, but means the "descent." He further testified that he was with Mr. Flipper on his examination of this tract and was with him in the identification of the monuments on the survey made by Molera in 1886 to ascertain the *demasias* of this tract (defendant's exhibit 5, R., 255, and maps attached); that he had seen the old house of

San Pedro, with its old round tower and with dimensions a hundred feet long and more than that in width, said house being located as testified to by Mr. Flipper; that he had seen the cañada entering the San Pedro Valley from the west side thereof and originating in the southern portion of the Huachuca Mountains, and that said cañada was the largest one that he saw on the west side of the river in that vicinity, and that there was an old monument near it. He also testified as to the existence of *malpais* rock on the east side of the river, the whole plain being covered with it, and that there was very little of it on the west side of the river. The relevancy of this testimony will be seen when it is recalled that the plaintiff places the Arroyo del Malpais on the west side of the river, where there is very little or no malpais rock, and the Government theory is that it is located on the east side of the river, where Mr. Tipton testifies, as just stated, that the whole plain for miles is covered with it. Mr. Tipton also testified as to the great abundance of *monte* or brush existing on the east side of the river, where the boundary call for such vegetation is located under the Government's theory. On cross-examination plaintiff's counsel adduced the following testimony from Mr. Tipton (R. 103-104):

Q. Could not the language used in that expediente be translated that he commenced at the center of the grant?

A. In my opinion it could not.

Q. Is it not possible that it could be so from the construction of the language?

A. I do not think so.

Q. I call your attention to the fact that at the end of the first call a square monument was placed there, does it not?

A. That is not all it states, though.

Q. What else does it state?

A. The language here states substantially that the corner established at that place was a right angle; that is what these words mean, *mojonera, esquina cuadrada*.

* * * * *

Q. Would not that central point be the point at which these lines would form right angles?

A. I do not think it would.

Q. If that grant was correctly surveyed on the theory on which it has been surveyed, these lines would meet at right angles?

A. That is wholly imaginary.

Q. You say there must be a corner monument where the lines meet at right angles. If this land grant was correctly surveyed originally in the manner that it has been surveyed upon this map, would not these lines meet in right angles, as called for in that expediente?

A. No, sir.

* * * * *

Q. Your theory is that the third course commences or begins at the end of the second course, instead of commencing at the center monument?

A. Yes, sir; that is my theory.

* * * * *

Q. If you could find absolutely every call in the expediente on the lines as laid out by Mr. Contzen you still would not say that it could not

be possible that the original survey was not made from the center?

A. I have already made one answer that it would not be correct.

Q. You simply say the language, technically considered, requires the survey to be made around the grant?

A. Yes, sir.

In addition to the oral evidence thus presented by the Government there was introduced as defendant's Exhibit 1 (R., 205) the petition of the Eliases, predecessors in title of the claimant, presented to the surveyor-general, together with the map attached to such petition. This petition is interesting as showing that at this early date the claimants alleged a grant comprising only 4 square leagues, and the fact that time has obliterated the monuments and there only remained the old ruins at Ochoaville, the description of the expediente, the fact of the joint boundary of the San Rafael del Valle grant with the San Pedro grant, and the distance run as the sides of the grant as the data upon which its location could be made. The very complete system of monuments described by Contzen and the exactness with which he was able to locate this grant by natural objects hardly accords with these allegations, that time had obliterated all the monuments of the grant, and it will be interesting also to compare the sketch map filed by claimants with said petition (R., 206) with the survey of this grant originating from Howe and Contzen

The Government also presented in evidence Exhibit 5 (R., 255), a most interesting document found in the

archives of Mexico at Guaymas, being the expediente of the proceedings of denouncement of the *demasias* of the ranch of San Pedro initiated on July 8, 1880, by the Elias family, the predecessors in title of the plaintiff in this cause. This proceeding is most instructive, not only as bearing upon the issues in this cause, but also as showing the attitude of the Mexican Government toward the land over and above the exact area paid for and included within these ancient surveys. Without attempting to give this proceeding in detail, it seems proper at least to outline its purport as revealed from the record (pages 255-258).

On July 8, 1880, Manuel Elias made a formal denouncement "of the overplus (*demasias*) that may be in the ranch of San Pedro in the jurisdiction of the town of Santa Cruz, in the district of Magdalena," of which ranch he alleged that he was a coowner. After considerable difficulty with the authorities, arising from the fact that the proceedings were not carried forward with sufficient promptness, and after securing by appeal a declaration of his right to proceed to such denouncement (R., 262), Elias, on June 1, 1882 (R., 263), secured the appointment of one Pedro B. Molera, who was directed by the authorities to "proceed to the survey of the ranch of San Pedro, after examination of its title and citation of the adjoining owners, marking on the ground as well as on the respective maps the lawful area (*cabida legal*) of said ranch and the overplus (*demasias*) it may contain within its monuments, subjecting his operations to the general laws of July 22 and August

2, 1863," and warning the party that if said proceedings were not presented within ninety days from the notification of the survey the denouncement shall be declared void.

On July 15, 1882, Molera accepted the appointment (R., 265), and on July 19, 1882 (R., 266), he appeared at the ranch of San Pedro. The proceedings of Mr. Molera on said day (R., 266) recite that he found it necessary before proceeding with the survey to make a reconnoissance of the land because the titles are decidedly obscure, and says that notwithstanding the person who made the ancient survey gives the distances, the courses are incomprehensible, and no description is given of the places said title cites. This observation of Mr. Molera, upon the very title papers now under consideration, is most pertinent, as is also his record of the proceedings of July 21, 1882 (R., 266-267), in which he states that, accompanied by the parties in interest, they left the house of the ranch (i. e., the old house of San Pedro) in a direction to the south and traveled about half a league to where they found two monuments of piled-up stones on the summit of some low hillocks (*lomas*) to the east of the river and valley of San Pedro, which river runs from south to north, said monument being in front of where the valley (*bajio*) of Las Nutrias debouches. Mr. Molera then states that on account of the distance and what the title papers say he believes it must be in the vicinity where they began the ancient survey. It may be here recalled to the attention of the court that this point, which appears on the plats to said Exhibit 5 (R., 368), is the

precise point contended for by the Government in this cause as the initial point of the survey, and is not less than 10 miles south of the initial point taken by Contzen. Mr. Molera also (R., 266) infers from the title, which cites the slope of the peak, that it was the San José Mountain which might determine it, because it is the most noticeable point and the only peak in that direction, a position which accords entirely with the Government's position in this cause.

Having satisfied himself from the reconnoissance as to the general lines upon which this grant should be located, Mr. Molera (R., 267) proceeded to lay off the *cabida total*, or the entire area within the exterior monuments of the grant so far as he could ascertain them. The result of his efforts is shown by the second map attached to Government's Exhibit 5, opposite record page 268. After laying off a total area of 28,265.11 hectares, running up to the international line on the north, Mr. Molera, on July 28, 1882 (R., 267), proceeded to segregate the lawful area (*cabida legal*), which was 4 square leagues, and in laying off this quantity selected as his starting point an old monument distant 2,550 meters south, 4 degrees east from the old San Pedro ranch house, his initial point being that indentified to by Mr. Tipton and Mr. Flipper and appearing on defendant's Exhibit No. 10, page 326 of the record, as point X. The method by which this *cabida legal* was laid off appears from said map No. 2, opposite page 368, and also by the field notes on page 368, from which it appears that the legal area or *cabida legal* was 7,061.61 hectares, which deducted from the

total area of 28,265.11 hectares, left an overplus or *demasias* of 21,203.47 hectares, which remained to be paid for by the denouncer. Orders were thereupon given for the advertisement of these proceedings and testimony was taken (R., 271-277) as to the qualification of Mr. Elias to secure this property. On April 8, 1884 (R., 282), the district judge of Guaymas, reciting that it appears that the ranch of San Pedro belongs to various owners, who, under the law, have equal rights to the overplus (*demasias*), ordered that Manuel Elias be notified to state whether or not he consents that said overplus (*demasias*) shall be adjudged to him in company with the other owners, and if not that these latter may avail themselves of their right to state whether they waive the right they have in the denouncement of said overplus. Thereupon it was consented that the *demasias* should be adjudicated to all of the owners. On November 18, 1884, the value of the *demasias* was fixed at \$1,272.20 (R., 284), and it will be noted that no price was fixed for the *cabida legal*, since that portion of the survey belonged to the parties under the original title. This is shown by the order of June 22, 1886 (R., 287), in which the district judge recites that, "having examined the proceedings of survey and the map, both made by the surveyor, Pedro B. Molera, from which it appears there is a total area of 28,265.11 hectares, of which 7,061.64 hectares are covered by title and 21,203.47 hectares are overplus (*demasias*)," and having examined the other proceedings, he decrees the adjudication of said overplus to José María Manuel and the heirs of José

Juan Elías in third parts, but subject to the approval of the department of public works (R., 288). The proceedings were transmitted to the department of public works at Mexico on February 9, 1887 (R., 291). An error having been found in the calculations, the proceedings were returned, with orders to the surveyor to repeat the survey and to correct the error therein. The careful scrutiny of these proceedings by the Mexican Government is shown by the fact that the error herein alleged is that the grantees had been given as their *cabida legal* 39 ares, 20 centiares, "more than they are legally entitled to under said title to the prejudice and loss of said extension to the public treasury." These proceedings coming back to the district judge at Guaymas, Mr. Molera again went into the field, and on March 19, 1887, made a recalculation of the *cabida total*, with the result that the overplus was found to be 21,231 hectares and a fraction instead of 21,203 hectares and a fraction as originally ascertained. A corrected valuation of the property was thereupon made (R., 293) and the proceedings again sent to Mexico for final approval. On May 3, 1887, the department of public works (R., 296, 297) recites that they have examined the survey of the so-called demasias of the San Pedro ranch and have observed that upon such survey "*no monuments were found that would determine the limits or boundaries of said ranch,*" and that the courses indicated in the original survey are so confusing that when attempting to follow them, one goes and returns repeatedly over

the same line without its being possible to circumscribe with this data any perimeter whatever. It was accordingly ordered as follows (R., 296, 297):

These premises being established, it follows logically: First, that the ranch of San Pedro has no known boundaries nor boundaries that can be determined, and consequently that that ranch has no overplus (*demasias*), for the existence of this implies necessarily the existence of boundaries, so that the land denounced can not be considered as overplus (*demasias*), but properly as vacant public land (*terreno baldio*). Second, that the engineer, Pedro B. Molera, made an arbitrary survey, for he started from the point which he selected without other reason than his own free will, measured the surface of the ground that suited his pleasure, and followed the courses he thought convenient, for he ignored the only one indicated with precision in the minutes of the primitive survey. For the reasons stated the President of the Republic, to whom a report of the matter was made, has seen fit to order: First, the adjudication of the land improperly called overplus (*demasias*) of the ranch of San Pedro, which that district court decreed under date of June 22, 1886, in favor of citizen Manuel Elias and associates, is not approved. Second, notify the office of the chief of the treasury in the State of Sonora to register said land and the public treasury to enter into possession of it, except the part of said land which was sold to Messrs. McManus & Sons and for which the proper title has already been issued.

On June 20, 1887 (R., 297), the same department of public works, referring to the order last quoted "which denied in an absolute manner the pretended adjudication of said public lands (*baldios*) to said citizens, Manuel Elias and his associates," states that as a matter of equity it revokes said order and allows the purchase of said property as public lands so far as the same does not conflict with the grant to McManus & Sons adjacent thereto. On July 4, 1887 (R., 299), upon petition of Elias, Ignacio Bonillas was appointed as surveyor for the purpose of going to the premises and separating the McManus land from those sought by Elias, and thereupon to make a report that would pave the way to the final purchase of the balance by the Elias family. From Mr. Bonillas's survey (R., 301, 304, 305), which appears as plat No. 1, attached to Government's Exhibit 5, opposite page 368, it would be seen that the total area of the San Pedro ranch, after cutting off the McManus portion, was 22,058 hectares, 11 ares, 8 centares, "from which subtracting the legal area (*cabida legal*) of 7,022 hectares, 44 ares, there remains an excess or overplus (*demasias*) of 15,035 hectares, 67 ares, 8 centares." On February 24, 1888 (R., 306), the President of the Republic approved the adjudication of this overplus in favor of said Elias and associates and ordered the proper title issued to them upon the payment of the proper amount. From the record, pages 306 and 307, it appears that the proper amount was paid for the *demasias*, and on October 15, 1888, Alejandro Elias receipted for the title of said

demasias issued by President Porfirio Diaz, dated February 24, 1888.

This very interesting and instructive expediente is in itself a commentary on the Mexican system of administering upon an excess when found within the exterior boundaries of a grant made by that Government or its predecessor in sovereignty. The system being in short was that the *cabida legal*, the land originally purchased and paid for, was segregated by proper survey and the remaining amount was the subject of purchase from the National Government at the rates fixed by law. This expediente shows that so far as the present case is concerned the 4 sitios covered by the original grant was located by the Mexican Government within its territory at the ancient ranch of San Pedro, and that thereupon the owners of said *cabida legal* secured patent from the National Government for the balance. It is worthy of remark that not an acre of this legal area, located by the Mexican Government in favor of the Eliases, in satisfaction of their ancient right under the grant of 1821, lies within the survey made by Contzen and presented in evidence in this cause.

The Government also introduced in evidence as its Exhibit 6 (R., 317) the expediente of an adverse suit brought by Plutarco Elias, representing himself and his mother and brothers, on the denouncement of the overplus (*demasias*) of the Agua Prieta grant made by Camou Brothers, which said grant, so far as it is claimed within the United States, is involved in the case of

Ainsa administrator v. United States, No. 40, present term of this court. That expediente begins November 15, 1880, with a petition by Elias to the district judge of Guaymas, Mexico, opposing the denouncement of the *demasias* of said ranch by Camou on a number of grounds, among them being apparently the contention that in purchasing from the Elias family the Agua Prieta grant Camou had purchased only the *cabida legal* or legal area of 32 *sitios*, and had not purchased the *demasias* or excess over the *cabida legal* within the boundaries.

Responding to this contention, Mr. Camou, on November 7, 1880 (R., 319-322), says:

It appears that the adverse party understands that the Messrs. Elias sold only 32 *sitios* of land, and not their overplus (*demasias*), and therefore believe that they have some right to them. But such belief is truly erroneous. If the aforesaid deed of sale made mention of only 32 *sitios*, it was because these appear covered by the titles which they delivered, and which in due form I inclose on forty-four written leaves.
* * * On the other hand, it does not appear in the deed of sale that the vendors had reserved any right whatever with respect to the aforesaid overplus (*demasias*), nor could such reservation exist, inasmuch as at the time of its execution they belonged to the federation, and it was not till the 22d of July, 1863, when the President of the Republic, competently authorized, conceded to the possessors, and by way of grace, the authority to denounce them to the extent they had, for a certain remuneration.

On June 6, 1887 (R., 322), in deciding the matter the district judge recites the fact that the Elias family have already denounced a large area of *demasias* within the Republic of Mexico, and mentions among other tracts so denounced by them (R., 323) the quantity of land secured as overplus of San Pedro, the process of securing which by the Eliases has just been discussed in connection with plaintiff's Exhibit 5; and the district judge thereupon further calls attention to the fact that there corresponds to each of said Eliases, in consequence of said denouncements, a grant of more than the 2,500 hectares, which they are allowed to obtain under the law of vacant lands of July 20, 1863, article 2. He then quotes (R., 324) from certain regulations of the department of public works in which the method of acquiring *demasias and other vacant lands (baldios)* is set forth, and shows from said order of the department of public works that *demasias* or overplus within a grant is on exactly the same basis as other public lands, except that under the provisions of the law of July 22, 1863, a preference in its purchase was given the owner of the legal area. The district judge upon this record holds that the Elias family, the contestants, have no right to be admitted as denouncers, since they have already obtained an area greater than that designated by the law, and for that reason are incapacitated from obtaining more vacant land (*baldio*) in the Republic.

This proceeding is relevant when it is recalled that these Eliases are the predecessors in title of the plaintiff in this cause; that plaintiff is seeking here to

secure a confirmation from the United States of a large area in excess of the *cabida legal*, and that under the proceedings just referred to the Eliases are held to be entitled to no more *demasias* within the Republic of Mexico, having exhausted their right by its previous exercise. It can hardly be contended that the United States is bound to give to the owners of the San Pedro grant more than the Mexican Government, the maker of that grant, is bound to give them.

The cause was submitted on the proofs just referred to on June 2, 1899 (R., 327); and on the 27th day of November, 1899 (R., 329), the court entered a decree rejecting the grant and dismissing the petition. The opinion of the court was rendered through Mr. Justice Fuller (R., 328), and the ground of rejection, without passing on the other contentions urged by the United States, was the fact that the owners of the grant had secured full satisfaction from the Mexican Government and within its territory of all they were entitled to—the 4 sitios bought and paid for.

An appeal was sued out by claimant on November 27, 1899 (R., 328).

BRIEF.

The argument presented following will have chief relation to the area of the grant, whether or not it has been satisfied by the Mexican Government, and its location in the Republic of Mexico.

There is also a claim made for an excess (*demasias*) over the lawful area (*cabida legal*) covered by the

title, but it is contended that all right to such demasias is barred by the twelfth section of the act of March 3, 1891. Such excess was subject to the uncontrolled disposition of the Mexican Government, and its *jus disponendi* of the same was exercised when the territory was ceded to the United States by the treaty, provided any portion of it should properly fall within the territory ceded.

I.

The extent of this grant is 4 sitios—no more and no less—and the rights of the grantee are limited to the quantity petitioned for, appraised, advertised, sold, and paid for, and for which the formal title was issued twelve years thereafter by the succeeding Government.

The evident intention of the petitioner and the officials was directed to 4 sitios of land as the quantity desired. The entire proceeding is predicated upon such understanding. The minimum purchase money was carefully arrived at by a valuation of each sitio and paid accordingly. After the payment of the purchase money the proceedings seem to have stopped and nothing further was done for eleven years, when Rafael Elias, having acquired the interest of José Jesus Perez, the original petitioner and purchaser, applied to the treasurer-general of the State of Sonora for recognition of his right and the issuance of final title to him. Upon investigation by the State officials, it was determined that Elias had properly succeeded to all the rights of Perez and was entitled to have the final title issued to

him, which was done on May 8, 1833, more than twelve years after the payment of the purchase money for said 4 sitios (R., 127 Spanish).

(The translation of the granting clause of this title, found on page 153 of the record, is extremely crude, and for so much thereof as is necessary for the purpose of this brief we substitute our own translation.)

Mendoza construed the expediente as authorizing the issuance of final title to 4 sitios, viz:

Wherefore, in the exercise of the powers which the laws confer upon me, by these presents and in the name of the sovereign State of Sonora, I confer the grant in the form of 4 sitios of land for breeding large cattle and horses, which comprise the place named San Pedro, situate in the jurisdiction of the presidio of Santa Cruz, in favor of the citizen Rafael Elias, to whom I grant, give, and adjudicate these lands by way of sale, with all the privileges, guarantees, and stability which the laws provide, etc.

It was also ordered and commanded that the officials "do not permit that the said interested party nor his successors be in any manner disturbed in their peaceful enjoyment, nor molested in the free use, exercise, proprietorship, dominion, and possession of the said 4 sitios of land which comprise the place named San Pedro." (R., 127.)

Taking the final granting clause and the expediente, commencing with the petition, the great reiteration of the quantity of land as 4 sitios running all through the proceedings leaves no doubt as to the intention of the

parties, and brings the case clearly within the controlling authority upon this identical question of the following decision of this court:

Ainsa v. United States, 161 U. S., 208.

United States v. Maish, 171 U. S., 277.

Ely's Administrators v. United States, 171 U. S., 220.

Perrin v. United States, 171 U. S., 292.

If there were any doubt as to the extent of the land covered by the title and intended by the proceedings, it will be removed by an examination of the law under which the grant was made, which constituted a limitation upon the power of the officials to make grants of land, and should be considered equivalent to directions and notice to petitioners for the same.

This grant was made, as shown by the petition of Perez (R., 231), "pursuant to the provisions of the national laws and the terms of the royal cedula of February 14, 1805." That cedula provides (Reynolds, p. 72) that "there should not be adjudged nor granted more than 3 or 4 sitios to the wealthy and 2 to the poor." And the reason for this limitation, as stated in the cedula, is as follows (Reynolds, 72):

That the superior board, in view of that which has been decided, and considering that the settlement of a *sitio* of a league in extent was very difficult for a person of large means, and that lands of large area were held without this legal obligation having been fulfilled, to the prejudice of others, decided in their decree, etc.

This limitation is construed by Perez in his petition for this grant, in which, after referring to the fact that his application is pursuant to the terms of that cedula, he prays that proceedings be initiated for the final sale to him of "the 4 sitios" (R., 231). Perez had nowhere in his petition mentioned sitios, so that the 4 sitios referred to must be those allowed in the cedula under which he prays for the grant, the cedula of 1805. Thus he himself recognized the limitation imposed by law on the granting power and invoked the grant subject to this limitation, and his successors in interest at the present day can not claim more than this amount.

Under the terms of that cedula, irrespective of the recitals of the petition or the mention of quantity throughout the proceedings, the grantee was limited, as a matter of law, to 4 sitios, so that to the extent that the proceedings covered more than 4 sitios they were void as made without authority. That this is the proper construction of the limitation imposed by the said cedula is recognized not only in the petition presented by Perez, but also in other proceedings taken before the Mexican Government and which form a part of the history of that country's attitude toward its public lands. Thus in the report made by Special Agents Tipton and Flipper, dated April 13, 1897, giving the result of an examination of the archives at Hermosillo, Sonora, Mexico, which report was presented to this court in connection with the *Ely case* (171 U. S., 220), there is found on page 93 a syllabus of the expediente of the San Rafael de la Noria grant. In that case the proceedings were initiated on March 29, 1813, and went

through various official channels until they reached the viceroy at Mexico in 1816. On November 26, 1816, the viceroy referred the expediente to the attorney of the royal treasury. On December 31, 1816, the attorney recommended that the expediente be approved for 4 sitios instead of 5, as the amount of land *was limited to 4 sitios for one person*, and that husband and wife were one person. This expediente further shows that proceedings were thereupon had to segregate the 4 sitios from the original 5 and pay back the value of the one rejected. This proceeding is instructive not only as showing that there was a recognized limitation of the quantity grantable to any one party, but also as indicating the importance attached to this matter of quantity by the Spanish and Mexican officials, and as showing that it was the controlling element in all of their grants.

II.

That the securing to the owners of the grant of full satisfaction of its lawful area (*cabida legal*) by the Mexican Government is conclusive of the case here presented is distinctly held in *Ainsa v. United States* (161 U. S., 208, 234), where it is said:

We have referred to the proceedings of 1882, 1886 in Mexico as furnishing persuasive evidence of the proper construction of this grant under Mexican law, and it may be further observed that the adjudication of the overplus required the location of the $7\frac{1}{2}$ sitios, which location Mexico, as the granting Government,

assumed it had the right to make, and made out of the land within its jurisdiction. In this way the grant was satisfied by the receipt of all the grantees had bought and were entitled to under the Mexican law, the result as to the overplus inuring to Camou's cotenants by the terms of his petition.

This principle was reaffirmed by the Supreme Court in *Ely's case* (171 U. S., p. 240), where, in discussing the Ainsa case, it is said:

In that [the Ainsa] case it appeared that while the boundaries of the survey extended into the territory ceded by Mexico to the United States, the grantee had taken and was in possession of land still remaining within the limits of Mexico to the full extent which he had purchased and paid for, and therefore no legal or equitable claim existed against the United States in reference to the land within the ceded territory.

These two cases are on all fours with the case now under consideration. Here, as there, the quantity purchased and paid for has been satisfied by the Mexican Government out of lands within its jurisdiction on the application of claimant's predecessors in title. To confirm this claim would be to give to the petitioners what their grantors got years ago from the other Government—to recognize this title twice and as applying to two separate tracts, when there is no principle of law or common justice that gives it a claim to more than one recognition.

III.

The petition in this case was filed on May 29, 1897, and thus over four years after the time fixed by section 12 of the act of March 3, 1891. The claim is therefore "barred" and is to be deemed and taken as abandoned. This is at least true as to so much of the land as was held by imperfect title at the date of the treaty; and whatever may be the status of the cabida legal of 4 sitios, it must be admitted by the learned counsel who are claiming so much as to the status of the title to the demasias that the same were not held by perfect title in 1853, the purchase money never having been paid; so that the plain limitation of the land-court act precludes a recognition of this title beyond the 4 sitios or cabida legal. Since, as has been hereinbefore pointed out, the cabida legal has been located by the Mexican Government in its own territory, it is not anticipated that this court will consider seriously a proposition to give the claimant a tract of 4 sitios on the American side of the international boundary line, when there has already been given that quantity on the Mexican side of the line in satisfaction thereof.

IV.

The entire grant (cabida total) lies entirely within the Republic of Mexico.

If it shall turn out that this contention on behalf of the Government is well founded, the other questions are of no importance in the case.

A rational interpretation of the proceedings taken in 1821 relative to the survey of the land establishes the

fact that 4 sitios was the amount of land attempted to be segregated. The locus of the tract which the survey included was the depopulated place of San Pedro, close to the abandoned place of Las Nutrias. (R., 230-231.)

The surveyor, with assistants, in compliance with the usual formality attending such proceedings, on May 3, 1821 (R., 234), made an order that, as there are no adjoining owners to summons, public notice summoning whomever might be thought to have a better right, should be posted.

On May 17, 1821 (R., 235), Manuel Antunes, from the "place of Terrenate," acknowledged the summons stating he would be present to point out the lands which he intended to register, etc.

On the following day, May 18, 1821 (R., 235), "in the field, place of San Pedro," Manuel Antunes "appeared in person and stated that they could proceed to the survey from *the house of San Pedro down the river*, without any damage resulting to him in said direction, but going up the river, he would be damaged." Rafael Salas, attorney for Perez, took exception to Antunes's request, "on account of the delay that would result, to the prejudice of his party, by depriving him of the benefit of the water produced by the marsh (*ciénega*) which is the mother of these pastures (*cjidos*), for which reason the survey in behalf of his principal would be useless." The contention was compromised, and they "agreed to divide the water of the marsh in halves for the benefit of the farms."

This marsh (*ciénega*) above the ranch house of San Pedro is well known and exists to-day near the junction of the Arroyo de Las Nutrias with the San Pedro River and up the San Pedro River from the San Pedro house. This *ciénega* is about 2 miles above the house of San Pedro, and there are no other *ciénegas* between this one and the international boundary line.

It is apparent that the old house giving locus to the tract was in existence at the time of the primitive survey in 1821. The old place of Las Nutrias is in the vicinity of the ranch house of San Pedro and from 2 to 3 miles to the southwest (testimony of Mr. Flipper, R., 60-62.)

The house of San Pedro, referred to in the testimony, was the ancestral and is the present abode of the Elias family, by the occupation of which the entire San Pedro estate was supposed to be held in constructive possession. No other spot along the entire river has ever had any such designation as the "place of San Pedro." The general direction of the San Pedro River is from south to north, the maps all indicating it to run somewhat east of north.

Upon the compromise agreement between Antunes and Salas, attorney for Pérez, being entered of record, the survey was commenced. It must have started somewhere between the marsh (*ciénega*) and the old house of San Pedro, so that both parties might have its benefits, and certainly above the old house of San Pedro, otherwise the compromise would have been meaningless, for Antunes was willing they should commence and run from the house down the river.

The important object to be located, however, is the "*cañon of the Bachata*," designated as the northern or down-river terminus of the first line. If this can be accomplished the controversy is simplified; if it can not, then the San Pedro has no known or discoverable boundaries, and must fail for want of description identifying any segregated tract of land. The calls of the primitive survey can be found, locating the grant south of the international boundary line, if one will attempt in good faith to retrace the steps of the original surveyor; and to this end the notes of the primitive survey should not be laid aside, but, as far as possible, control the investigation on the ground.

FIRST LINE. (R., 235-236.)

The parties having agreed, * * * I caused a monument to be placed *at a rectangular corner*, from which, taking the course southwest to northwest, there were measured and counted 50 cords, the last of which terminated down the river from the house, on the edge of the ford, on the bank, where I had a cross monument placed.

The courses given (southwest to northwest) are impossible, but it is perfectly evident that this line was run from a point up the river from the San Pedro house, thence down the river in a northerly direction, the first 50 cords ending on the bank of the river near a ford. Continuing this line, 200 more cords were measured, at the end of each 50 cords of which monuments were placed, the last terminating "*in the cañon of the Bachata*, where I had a cross monument placed, a

general boundary and dividing rectangular corner, this side line inclosing in the figure of a true square 200 cords, which make 2½ leagues."

This was certainly a "*side line*" which ended in the cañon of the Bachata. It was evidently run in a direction somewhat west of north and terminated "in the cañon of the Bachata (where I had a cross monument placed), *general boundary and dividing rectangular corner, this side line inclosing and in the figure of a true square 200 cords, which make 2½ leagues."*

Whatever may have been the true distance, the line was run from the starting point to the "cañon of the Bachata" and was a "*side line*." It was run down the river from the starting point, and the first cross monument at the end of 50 cords was evidently below the ranch house and on the bank of the San Pedro River. The next 50 cords terminated in the same (San Pedro) valley, at the edge of a hillock (*loma*), distant 3 cords, "where I had a corner monument placed;" the next 50 cords terminated in front of the Guachuca (Huachuca) Mountains, "where I had a cross monument placed on a rocky hillock (*loma*);" the next 50 cords terminated "on a cat's claw (*chinosa*) table-land, where I had a corner monument placed," and the last 50 cords terminated "*in the cañon of the Bachata.*"

There seems to have been five laps of 50 cords each from the starting to the termination of this first line, making 250 cords instead of 200. It is beyond controversy that the Huachuca Mountains are on the west side of the San Pedro River. Although they do not

extend very far into Mexico, they are quite far enough below the line to answer the call at the end of the third 50 cords of the measurement. The Huachuca Mountains on the west side of the San Pedro River had some significance in fixing the direction and location of this line and as fixing their proximity to the end of the third 50 cords.

SECOND LINE (R., 236).

The second line commenced where the first terminated, "in the cañon of the Bachata," and formed at said place with the first line a "*general boundary and dividing rectangular corner.*" The general direction of this line was substantially at right angles to the first, and terminated, after crossing the river, at the "slope of the peak," which is admittedly a peak of the San José Mountains, some distance to the east of the San Pedro River. The "slope of the peak," fixed by plaintiffs' surveyors some distance south of the international boundary line and on the slope of a high peak of the San José Mountains, is admitted by the Government to be the point designated in the primitive survey as the termination of the second line.

It would seem absolutely necessary for this second line to run from west to east in order to cross the river and terminate on the "slope of the peak" of the San José Mountains.

This line commenced at the Bachata Cañon; the first 50 cords terminated "*in the middle of the valley of the San Pedro River.*" The second 50 cords terminated "*just after crossing the river, at the edge of a hillock*

(*loma*);” the third 50 cords terminated “in the Arroyo de las Baras;” the fourth 50 cords terminatad “in a thicket of dark brush;” and the fifth and last 50 cords of the line terminated “*on the slope of the peak* where I had a monument placed, a *general rectangular corner*, this measurement inclosing 250 cords, which make $2\frac{1}{2}$ leagues *for its side*.” This was evidently a *side line*. The survey was then concluded for the day.

Whatever may have been the correct distance, the line commenced at *the* or *a* cañon of the Bachata on the west side of the San Pedro River and terminated on “the slope of the peak” of the San José Mountains on the east and formed a side line of the contemplated “*figure of a true square*.”

From the admitted location of the “slope of the peak,” upon which Contzen found the monument (“pile of stones”), and the indisputable fact, disclosed by the minutes of the survey in 1821, that the line from the “cañon of the Bachata” to the “slope of the peak” crossed the San Pedro River, it is certain that the Bachata Cañon and the monument on the slope of the peak must be on opposite sides of the San Pedro River. It seems that ordinary care and prudence would have suggested to Roskrug and Contzen, before attempting to fix definitely the location of the “cañon of the Bachata,” that an examination should be made on the west side of the San Pedro River and Valley to see whether the topographical features of that portion of the country would throw any light upon the description of the terminus of the first line

and the beginning of the second, and also to discover if the monument ("pile of stones") existed on that side, near a large canyon containing the bachata bush. Had such an examination been conducted, they would no doubt have found conditions just exactly as described by Special Agents Tipton and Flipper after a careful examination on the ground under the immediate supervision of Mr. Pope, one of the counsel for the Government (R., 61-63, 92, 94, and 101).

It seems that appellants' surveyors avoided with extreme care any attempt to give the notes of the primitive survey any interpretation, or to investigate the topographical features of the country west of the San Pedro River or south of the line (R., 30-37). It is not at all probable that cañons on the edge of the San Pedro River Valley and coming out of the mountains on either side possessed any definite names as early as May, 1821, particularly in an abandoned and uninhabited country, and the name no doubt was given by the surveyors at the time from the prevalence of the bachata bush therein. The largest well-defined cañon on the west side of the river coming out of the Huachaca Mountains and containing the bachata bush, and having the "pile of stones" so convincing to land-grant claimants and their surveyors as monuments of land-grant boundaries, situate on the point of the mesa at the edge of the cañon where it comes into the San Pedro Valley, was found. This monument at the edge of the cañon is 2.70 miles due south of the international boundary line (defendant's Exhibit No. 7, R., 326), and

is 2.86 miles from monument No. 98 of the international boundary (*ibid.*). The San Pedro River is not laid down on this map (*ibid.*), but crosses the line from southwest to northeast some considerable distance east of said monument No. 98. (See plaintiffs' Exhibit No. 28, R., 204.)

If this cañon located by Flipper and Tipton on the western edge of the San Pedro Valley be taken as the terminus or north end of the first line and the beginning of the second line, and the monument on the "slope of the peak" of the San José Mountains is correctly located by Contzen—and it is conceded by the Government to be correct—be taken as the terminus of the second line, then the location of the San Pedro grant is easily determined, and the recitals of the primitive survey can receive a rational interpretation and become perfectly intelligible.

It is insisted by the Government that by fixing the Bachata Cañon at the point on the western edge of the San Pedro Valley 270 miles due south of the international boundary line it comports with every intelligible recital of the expediente; but its location on the east side of the river would be arbitrary and render impossible any significance to the other calls. It is submitted that the monument on the "slope of the peak" of the San José Mountains, being conceded to be the point called for in the minutes of the primitive survey as the termination of the second line, there is no escape from the correctness of the location by Flipper and Tipton of the "cañon of the Bachata" on

the west side of the river with its monument ("pile of stones") 2.70 miles due south of the international boundary.

This second line was a side line, and at the cañon of the Bachata formed a right angle to the first, and must be the north boundary of the San Pedro grant as surveyed in 1821. If the Government is correct in this conclusion the entire grant is south of the line, and we have no further interest in the premises and the petition should be dismissed. But it is deemed proper to follow out the primitive survey.

THIRD LINE (R, 237).

The third line commenced where the second terminated, "on the slope of the peak" of the San José Mountains, forming at said point by its intersection with the second line the "*general rectangular corner*," and must have been run in a southerly direction so as to form the angle at the "slope of the peak," and be parallel with the first line so as to form the opposite side of the contemplated "*figure of a true square*."

The line started at the monument on the "slope of the peak;" the first 50 cords terminated "in a dense thicket of brush;" the second 50 cords terminated "on the Arroyo del Malpais;" the third 50 cords terminated "on the rise to a red table-land;" the fourth and last 50 cords terminated "on the same table-land, where I had a monument placed, a *general boundary and dividing rectangular corner*."

The examination by Flipper and Tipton on the east side of the river resulted in the discovery of malpais

rock, thickets of dark brush and red mesa. (R., 62-64 and 102.) The monument on the red table-land (mesa) was not discovered, but the object itself answers sufficiently to fix approximately the termination of this third line at its southern end. It will be observed that the surveyor does not state the length of this line, but the line seems to terminate on the red table-land at the end of the fourth measurement of 50 cords.

FOURTH LINE (R., 237).

The fourth line was not measured; nor was this necessary. To close the figure was simply to project a line from the termination of the third line "on the same (red) table land" to the point of beginning, somewhere between the cienega and the house of San Pedro; hence the surveyor closed the survey and figure by stating: "There were assumed to be inclosed and measured 250 cords, which make $2\frac{1}{2}$ leagues; with which operation there were located, *the sides measured*, surveyed, and the area determined of 4 sitios of land for large stock," etc.

If the muniments of title upon which this case is predicated and the recitals therein identifying the land included within the segregating boundaries possess any verity, it needs not the aid of experts to determine that an attempt was made to lay off the land in the "figure of a true square," including within its perimeter 4 sitios. The fact that the figure circumscribed according to the measurements is not a "true square" can be ascribed to ignorance or carelessness, and possibly both. But whatever geometrical figure was laid off included the

old house at the depopulated place down the San Pedro River close to the abandoned place of Las Nutrias. (R., 231; see testimony of Tipton, R., 100.)

The old house mentioned in the survey of 1821 fixes the locus of the tract, and no survey is entitled to serious consideration which leaves out the very object that identifies the tract on the San Pedro River from the vast body of public domain along its course. It has been shown by the evidence that no other place along the river has ever been known by that name, yet Mr. Contzen gives it no consideration and leaves it 5 or 6 miles south of his south line.

This old ranch castle, with its towers, stands in the valley a sentinel warning the passers-by that here is the San Pedro land grant, the ancient estate of the Eliases. To include this castle in the grant, whether measured by quantity, by courses and distances, or by natural objects, is to forever exclude any portion of the San Pedro grant from the territory of the United States.

CONTZEN'S MAP (PLAINTIFFS' EXHIBIT 28, R., 204).

Had Mr. Contzen constructed his map by fixing the north boundary where he has placed the south he probably would have included the San Pedro grant within his lines, provided a few "piles of stones" for monuments were discoverable, and it is believed that this country is sufficiently prolific in this regard to satisfy this requirement for him as well as other eminent surveyors who have from time to time attempted the location or relocation of land grants in southern Arizona. He no doubt would have given more attention to the

descriptive calls of the primitive survey, and possibly would have run the perimeter or sides of the contemplated "figure of a true square," as was evidently attempted by the original surveyor, instead of radiating diagonal lines from an assumed center over 10 miles north of where the primitive field notes clearly and certainly fix the initial point of the survey as above the ranch house of San Pedro and in the vicinity of the cienega. Had Contzen and those accompanying him taken the ordinary precaution to make a general reconnoissance of the country up the San Pedro Valley as far as the well-known San Pedro house of the Eliases, from whom his clients derived title, and honestly attempted to include the place of San Pedro within his outlines, some charity might be extended to him in dealing with his evident weakness; but it is apparent, from his testimony and the map which he attempted to foist upon the court below, that no attention was given the descriptive calls of the primitive survey. He was evidently willing to be misled by Roskruge's location of the south boundary of the San Rafael del Valle grant north of the international boundary line, and to start his survey of the San Pedro by tying to it for the north line of the San Pedro grant, although such course might be at the expense of the true location and result in sacrificing the very place which gave his grant its name, and the desire for the possession of which brought the application of Perez into existence.

His proper course, and as well that of Roskruge, should have been to determine the north boundary of

the San Pedro grant first, which, having been accomplished, would become the south line of the *cabida total* of the San Rafael del Valle grant. It will be noted that the San Pedro survey was made May 18 and 19, 1821 (R., 236, 237), and that of the San Rafael del Valle on August 21, 1827 (R., 199); and it is to be pertinently remarked that the field notes of the primitive survey of the latter grant recite that (R., 199)—

At the place named San Rafael, on the 21st day of the month of August, 1827, I, the said judge and surveyor, for the purpose of commencing the survey of the lands denounced by the citizen Rafael Elias, delivered to the officers a cord well twisted and greased, and a Castillian vara, with which they measured and counted on said cord fifty varas; and when this was done they attached a lance to each end of said cord, and in presence of the interested party, the measurement was commenced at a point selected as the center, which was at some hills; and running south there was measured and counted two hundred cords, the line terminating at the line of the rancho of San Pedro, granted to Don Jesus Ferez, and in his name was present the administrator of said rancho with documents showing that his measurements extended to that point, the monuments of which existing at that place being the boundary of both parties interested.

It seems almost indisputable that the location of the north line of the San Pedro grant was a line extending from a cañon of Bachata coming out of the Huachaca Mountains, which line ran eastwardly to the monument

on the "slope of the peak" of the San José Mountains, and in its course crossed the river; yet Roskruge and Contzen adopt as the southeast corner of the San Rafael del Valle grant and the northeast corner of the San Pedro grant a pile of stones which they find $2\frac{1}{2}$ miles east of the San Pedro River, and this because it happens to be situate in a cañon containing bachata brush, which is not the only one in that country, and because Concepción Elias said it was the Bachata Cañon. The San Rafael del Valle survey says nothing about a cañon of Bachata, and its location has no relation to it, except in so far as it might furnish a correct location of the north line of the San Pedro grant, and this was studiously avoided by Roskruge and Contzen by their adopting the pile of stones situate near a cañon containing bachata brush, and $2\frac{1}{2}$ miles east of the river, as a common corner, and then projecting the dividing line west to any point which might please the fancy of Contzen and his friend Cobb.

It is quite obvious that the south line of the San Rafael del Valle grant can not be located without locating the north line of the San Pedro, and not a point of the latter can be fairly or honestly located upon the cañon of the Bachata east of the San Pedro River, and almost due north from the monument on "the slope of the peak" of the San José Mountains, distant, according to Contzen's map, about 10 miles. If the San Rafael del Valle south boundary is placed at the north boundary of the San Pedro, and such would seem to be necessary from the calls of that grant (R., 199), then the

San Rafael del Valle extends between 9 and 10 miles farther south and up the San Pedro River than Roskruge has placed it, and the area within which its 4 sitios can be floated is materially accentuated. The bearing that the case at bar has directly upon that grant (*United States v. Camou*, No. 229 O. T., 1900 and now No. 35 O. T., 1901, under submission) can readily be appreciated.

The title papers of this (San Pedro) grant were introduced in evidence in the San Rafael del Valle case as plaintiff's Exhibit No. 8. (See San Rafael del Valle Record, pp. 130-154 and 154-180.) The translation of the courses are incorrect, but as they go and come over the same line they are ignored. The purpose of their introduction was to furnish some evidence of the location of the south boundary of the San Rafael del Valle, wherein the north boundary of the San Pedro, as fixed in May, 1821, six years previously, was called as far as the south line of the San Rafael del Valle. Hence, the Government made its contention in that case that the south line of the San Rafael del Valle, as fixed by Roskruge, was 10 miles too far north to touch the San Pedro grant, which would make the San Rafael del Valle extend $23\frac{1}{2}$ miles from the limy hill on the north to the San Pedro north boundary, instead of about $13\frac{1}{2}$ miles, as estimated by Mr. Roskruge; and the pertinency of the suggestion of the Government's counsel, made at the time of the submission to the court of the San Rafael del Valle case, that a consideration of both of these cases together and at the

same time was necessary to a proper solution of the controversies involved now becomes forcibly apparent.

It is urged, however, that the survey as made by Mr. Contzen carries the boundaries to the natural objects named in the expediente, whereas the Government's location of the grant does not. This, it is respectfully submitted, is not true under the proofs. The claimants' survey does not accord with the natural objects of the expediente, while a survey executed on the lines shown by defendant's exhibit 8 would find such objects at the place called for by the expediente—and that within the Republic of Mexico. At the risk of some repetition, a few of the discrepancies between the primitive and the claimants' survey will now be pointed out.

Messrs. Flipper and Tipton both testified on the trial that there was nothing in the *expediente* to indicate that the grant was surveyed from a center and that there was everything—as plain as language could make it—to show that it was not so surveyed. It is scarcely necessary to do more than to read the proceedings of survey to show how the survey was made. The surveyor began at a point above the house of San Pedro, measured thence *50 cords* on a course which is unintelligible, but “down the river” until he came to a point below the house of San Pedro on the bank of a ford, where he had a *cross* monument placed. Mr. Flipper very clearly explained and illustrated to the court the appropriateness of designating this as a cross monument, being that with respect to the first of the 4 *sitios*, if the

grant were surveyed by exterior. He further explained the utter lack of significance it would have were it surveyed from a center. Mr. Contzen himself admitted that on his center theory of the survey it had no significance. From this point the surveyor continued 50 cords more to what he designates as a corner monument. This, as Mr. Flipper explained, has a clearly defined meaning if the survey were made by exterior, whereas it is an entirely senseless designation if the survey were from a center. The same observations apply to the other and frequent uses of the terms "cross" and "corner" monuments found throughout the *expediente*. The surveyor continued on this line until he reaches the end of 250 cords, where he places a "general boundary and dividing rectangular corner." This designation means a point at which two lines come together at right angles, forming a corner, and would be entirely inapplicable to a monument at the end of a line running from a center and forming an angle with no other line run. Further, the surveyor says of the line just run: "This side line inclosing, and in the figure of a true square, 200 cords, which make $2\frac{1}{2}$ leagues." However we may disagree with the surveyor's mathematics when he says that 200 cords make $2\frac{1}{2}$ leagues, there is no explanation of his statement that the line just run is a "side line" except on the theory that it is an exterior line. A comparison of defendant's Exhibit No. 8, which represents the Government's contention as to how this survey was approximately run, with plaintiff's Exhibit No. 28, the Contzen plat, will

show how this first course as originally run accords with the Government's plat. On this last the course just described runs northeast from the center; on the Government's exhibit it runs northwest. Upon reaching the end of the course and the monument there erected the surveyor says: "*From there*, the compass being set up * * * there were measured," etc. From where? Certainly not from a center, as claimant contends, but from "there," the place where he was, the monument that he had just erected. To say that when the surveyor had described a monument and said he proceeded "from there," he meant from a point miles away is to argue for an evident absurdity. That this does not mean from the center (*centro*), but from the rectangular corner, "*mojonera esquina*," just located, is shown by the Spanish at the end of the third course, where in proceeding to the fourth course the words "*desde ella*" (from there) are used. The pronoun *ella* is feminine, thus necessarily referring to the feminine antecedent "*mojonera esquina*." If the place from which the new course was begun was the center, the word *centro* (center), which is masculine, would require the masculine form "*desde el*." Further, the last course was not actually run and no monument was placed at the end of it. Had this been run from a center, as represented on the Contzen map, it would have been measured by the surveyor as the others were and a monument would have been erected at the end of it to bound the tract; otherwise the survey would have been manifestly incomplete. On

the Government's theory, however, since the fourth course was simply the line closing the square, there was no necessity either of measuring it or of erecting a monument at the end of it. If the preceding sides had been properly laid off, it was necessarily of the right length and it would "close" on the initial or starting corner. All of the many details of the survey, which show that it was an exterior survey and not such a one as Mr. Contzen delineates, are fully set forth in the testimony presented for the Government in this case, and it does not seem necessary to do more than to refer to that testimony and the expediente to establish the correctness of the Government's location of the canyon of the Bachata west of the San Pedro River, and the "slope of the peak" on the east side, thus fixing the north line and demonstrating the utter fallacy of Contzen's survey and theory upon which his map was constructed.

This is the San Pedro grant, so called from time out of mind. It is asked for as "the depopulated place down the San Pedro River." The proceedings show that the survey was first designated to be from "the house of San Pedro down the river," and was afterwards changed so as to start about 50 cords up the river from the house, the last of the 50 cords terminating "down the river from the house on the edge of the ford." The old house of San Pedro is well known, with its towers and fortifications for defense against the Indians. The settlement of San Pedro, recently the location of a Mexican custom-house, is

equally well known, clustered around this old house and occupied by the retainers of the Eliases, the descendants of the original of this grant. This settlement is about the center of the *cabida legal* of this grant as laid off by the Mexican authorities, and it is here that the Mexican owners of this grant reside and have always resided, since 1821, when within the limits of the grant at all. Certainly the San Pedro grant when properly laid out must include San Pedro, the place that gives it a name and has been from the earliest days and is now the headquarters of the ranch of its owners. A San Pedro grant without San Pedro is the old story of Hamlet without Hamlet, and yet the south line of Contzen's survey is 4 or 5 miles north of San Pedro. Manifestly such a survey is incorrect.

The petition in the *expediente* is for a tract of land "close to the abandoned place of Las Nutrias." No part of Contzen's survey is within miles of Las Nutrias, whereas the starting point of the survey shown on "Government's Exhibit 8" is at the entrance to the Las Nutrias Valley and at a comparatively short distance therefrom, as is the initial point selected by the Mexican engineer who made the survey under the *demasias* application in 1880-1888.

From the titles it appears that in 1821 a controversy occurred between Perez and Antunes, a neighboring property owner, as to the proper starting point of the survey. Antunes was willing for Perez to have from the house of San Pedro down the river, whereas Perez desired to go farther up the river. This was finally

settled by the division of the *ciénega*. The starting point was thereupon placed at the agreed point, obviously in the vicinity of the *ciénega*, and, as shown by the field notes, about 50 cords above the house. The starting point suggested by the Government and adopted by the Mexican surveyor in the *demasias* proceedings of 1880-1888 and marked on the ground by a pile of stone which Messrs. Tipton and Flipper located, agrees with this, a *ciénega* being found in the immediate vicinity and about where the Las Nutrias Creek debouches, and the house of San Pedro being found about 50 cords down the river or north therefrom. On the other hand the initial point of Contzen's survey is at least 10 miles from the house of San Pedro and the *ciénega*. Some attempt was made to prove the existence of an old house at Palominos, but the proof shows the houses there have been built within the last twenty years and that there were none there before, and no settlement there until recently. No pretense was made that that settlement was ever called San Pedro or that there is a *ciénega* just above it, as called for in the titles.

It is further claimed by plaintiff that the Bachata cañon, which is the end of the first call, is on the east side of the San Pedro River, running out of the Mule Mountains. Roskrige and Contzen are the only witnesses who say that the Bachata cañon is at that point and they know nothing about the country, except what they had learned in going there to make surveys for the purpose of testifying before the court. Claimants

discreetly abstained from producing any of the Eliases or other Mexicans acquainted with that section of country and the Mexican names applicable thereto to prove this to be Bachata cañon, although Concepcion Elias, one of their alleged witnesses as to this was, as above pointed out, present in court. Counsel did ask Gavino Arriaga, the Government's Mexican witness, about this, and he stated that he had never heard that *cañada* called by the name of Bachata, although he has been acquainted with that section for the past fifty years. This matter, however, is settled by the *expediente*. If the survey was made by running exterior lines and not from a center—and this the titles abundantly prove—then the Bachata *cañada* can not be on the east of the San Pedro. Thus, the first side line terminates at the Bachata *cañada*; from there the next side line was run to the Picacho, which, it is agreed, is at the San José Mountains, on the east side of the San Pedro (see plats); so that if the Bachata cañon be on the east side of the river a side line connecting it with the Picacho would not cross the San Pedro. However, in the surveyor's notes of May 18, 1821, he says in running the first 50 cords of the second course that it terminated in the middle of the valley of the San Pedro and upon running the second 50 cords, the last of them terminated just after *crossing the river* at the edge of a hillock (*loma*). The court has only to notice the fact that a line connecting the Bachata *cañada*, as located by claimants, and the Picacho would not come within miles of the river, to

see the fallacy of claimants' survey. While it is difficult to state now what was known as *Bachata cañada* in 1821 it is quite certain that it was west of the river and in about the locality indicated on the map presented by the Government as Exhibit No. 8. Mr. Flipper found at that point a wide *cañada*—the widest on that side of the river for many miles north and south—near the mouth of which was found an old monument of stones and at the head of which were a number of the shrubs known as “bachata.” Mr. Barton, who made an investigation of this grant for the surveyor-general in 1886, or thereabouts, also testified that he understood that the *Bachata cañada* issued out of the Huachucas about that point. If this *cañada* be west and not east of the San Pedro, the line running northeast from the center of the Contzen survey has no natural object to guide or limit it and is therefore fanciful.

As fanciful are the other lines of the Contzen survey. Since the title papers contain no intelligible courses, the direction given the four lines radiating from the center of the Contzen survey depends entirely upon the existence of natural objects to control them. The fact that no such object as *Bachata Cañon* exists toward the northeast to guide the first course has just been discussed. The line toward the southeast (the second course) may be considered as controlled in its direction by the *Picacho*, which is well known. The third course, which is toward the southwest, was, Mr. Contzen testified, so run because there was “an oak forest” in that direction. The *expediente* says nothing,

however, about "an oak forest," but mentions only "*un monte espeso*," a "thick clump of timber or brush." As shown by the proof, there are hundreds of such clumps all over the country, and especially on the east side of the river, where the Government contends this course was run, the country is black with *monte* composed largely of *palo prieto*. The fourth course indicates even more forcibly the unreliability of Mr. Contzen's method of surveying this tract. He says he ran this course as he did toward the northwest with no other guide than a pile of stones which he found out on the mesa. Aside from the notoriously uncertain character of a pile of stones as a monument, especially when uncorroborated by natural objects, Mr. Contzen's theory is untenable for the reason that the *expediente* shows that the course was *not* run at all and that *no* monument was placed at the end of it. All that the *expediente* says on this point is that "from it" (*ella*), i. e., *esquina* (feminine) not *centro* (masculine), "taking the course from southwest to northwest, there were *assumed to be inclosed and measured* 250 cords, which make $2\frac{1}{2}$ leagues." Counsel for claimant was candid enough to admit in his brief in the court below that "the weak point of Mr. Contzen's survey is on the line from the center to the northeast corner"—the course to Bachata Cañon. While there is no doubt that this is "a weak point" of the survey, it has even more to commend it than the courses to the southwest and northwest corners, the one run so as to reach one of the hundreds of clumps of trees in the

locality, and the other run so as to reach a monument that the original surveyor never put there at all.

Much stress seems to be laid by plaintiff on the size of what it is pleased to term the center monument. It is very peculiar that if such a monument were originally erected the expediente says nothing about it. It can hardly be supposed that the surveyor of 1821 would fail to mention so prominent a monument erected as a center, if any such center were ever chosen or constructed. The plaintiff's center of this grant is as mythical as the elaborate waterfalls mentioned in his translation and in witness Cobb's testimony as such a beautiful feature of the landscape and such an enduring monument to the integrity of Contzen's survey.

It is believed that it has conclusively been shown that the entire grant is in the Republic of Mexico, and that the owners have received full satisfaction thereof from the Mexican Government; and that, therefore, the judgment of the Court of Private Land Claims should be affirmed.

Respectfully submitted.

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MATTHEW G. REYNOLDS,
Special Assistant to the Attorney-General.

WILLIAM H. POPE,
Special Assistant to the Attorney-General.

Supreme Court of the United States.

No. 30.—OCTOBER TERM, 1901.

The Reloj Cattle Company, Appellant,	}	Appeal from the Court of Private Land Claims.
vs.		
The United States.		

[March 17, 1902.]

The Reloj Cattle Company, claiming to be the owner in fee of a tract of land in the county of Cochise, Arizona, which it described as the San Pedro grant, filed its petition for confirmation in the Court of Private Land Claims, May 29, 1897. The petition alleged that the grant contained 37,000 acres in the United States, and, by a sketch map attached, 19,000 acres in the Republic of Mexico, or a total of 56,000 acres, within its exterior boundaries. It gave a description of the grant by courses and distances from certain natural objects, and relied on a survey made by one Howe. The petition further alleged that plaintiff was the owner of the tract by virtue of certain instruments in writing, by which it had acquired from Rafael Elias, the original grantee, title to all the property he had therein; that the grant title bore date May 2, 1833, and was duly made, executed and delivered by Don José Maria Mendoza, treasurer general of the State of Sonora, in the name of that State, under and by virtue of article 11 of the general sovereign decree No. 70, passed August 4, 1824, by the sovereign constituent congress of the United States of Mexico, which article conceded to all of the States of the Republic the rents or revenues which by said law were not reserved to the general government, one of which revenues was the vacant lands within the States of the Republic, thereby confirming to the States the lands so described.

It was further averred that by law No. 30 of May 20, 1825, and other decrees subsequent thereto, the constituent congress of the State of Sonora and Sinaloa prescribed regulations for the sale of such lands; that the initiatory proceeding to obtain the grant title to the lands in question was by petition dated 1820 or 1821, addressed to the governor intendente, the officer of the Spanish government in charge of and having exclusive jurisdiction in the matter of the sales of public lands in the precinct of Fronteras, in which precinct the lands petitioned for were situated, which petition was made and signed by José Jesus Perez, and proceedings thereon taken as required by the applicable royal ordinances of December 4, 1786; that thereafter, on July 5, 1822, at Arispe, Sonora, the tract petitioned for was sold by the proper officers to Perez for the sum of \$190; that on July

6 the intendente ordered Perez to pay into the treasury that sum, together with costs and charges; that on July 7 the sale was approved by the provincial imperial treasury at Arispe, and was referred to the superior board of the treasury for its approval or determination, and that thereafter the \$190, together with costs and charges, was paid into the national treasury of the Republic of Mexico; but that the superior board of the treasury was abolished before the sale was approved, and no further action was taken until October 25, 1832, when proceedings were instituted to transfer the rights and title of Perez to Rafael Elias, and to have the formal title to the lands issue to Elias; that in accordance therewith, on May 8, 1833, José Maria Mendoza, the treasurer general of the State of Sonora, issued to Elias the final testimonio or evidence of title to the grant, which was thereupon duly recorded in the proper records of Sonora.

The petition alleged that the claim was presented by certain grantors of petitioner to the surveyor general of Arizona, and a report made by a duly authorized agent of the United States to the effect that the expediente was among the archives in the State of Sonora, and that all the proceedings were regular, and the certificates showing payment and the record of the transfer between Perez and Elias were properly recorded, and in the proper place, among the archives of Sonora; that there was on file in the office of the surveyor general of Arizona a report of one Wharton, apparently acting under special instructions of the Commissioner of the General Land Office, in which he reported against the land grant, and that the land described therein was situated in the State of Sonora, Mexico, but the petition charged that the report was not made with full knowledge of the facts; and also that there was a report on file by one Borton, apparently acting under instructions of the surveyor general of Arizona, of an indefinite character. And it was alleged that beyond what was so stated the San Pedro grant had not been acted on by Congress, or any other competent authority of the United States, constituted by law for the adjustment of land titles within the territory of Arizona.

The petition averred that all the proceedings in the matter of the grant were regular, complete and legal, and vested a perfect and valid title in fee thereto in the grantee; that the grantee went into actual possession and erected proper monuments, and that the grantee and his descendants and legal representatives and assigns have continued until the present time in the actual possession, use and occupation of the same, and were seized and possessed in fee thereof; that petitioner was entitled to all of the lands embraced within the original survey of the grant lying in the territory of Arizona, and that they were the lands delineated on the map filed with the petition; and that there was no person in possession of the grant otherwise than by permission of petitioner, except one Roberts, who was made a defendant. On May 13, 1899, plaintiff filed an amended petition in

which the description followed an amended map and survey made by one Contzen, and attached to the amended petition, which survey was the one relied on at the trial, and made the contents of the grant within the United States 38,622.06 acres.

The answer of the United States denied the correctness of the surveys and maps of Howe and of Contzen, and alleged that the tract, whether located according to quantity, or courses and distances, or natural objects, was situated entirely south of the boundary line between the Republics of the United States and Mexico, and without the jurisdiction of the court.

The answer further denied that the claim set forth was at the date of the treaty a complete and perfect title, and pleaded the statute, whereby all imperfect claims not filed within two years from March 3, 1891, became forever barred.

The answer also set up that under and pursuant to proceedings of denouncement, commenced in July, 1880, by the predecessors of the Reloj Cattle Company, the government of Mexico measured off and delineated to said persons the legal area or *cabida legal* of four sitios mentioned in claimant's title papers; and in the same proceedings it was adjudged that the ranch of San Pedro had no known boundary, and thus no surplus or *demasias*; that the four sitios were measured off and delineated to said persons by the Mexican government and located entirely within the Republic of Mexico; and that the claim sued for was thus entirely satisfied and discharged by the location of the said four sitios within the Republic of Mexico.

The case came on for hearing in June, 1899, at which time there was offered in evidence for plaintiff a copy of the original expediente of the San Pedro grant, from which it appeared that in the year 1821 one José Jesus Perez presented the following petition to the governor intendente:

"I, Don José de Jesus Perez, a resident of this capital, before your excellency, in conformity with law, and in accordance with the royal ordinances concerning land, laws, sanctions, and rescripts that treat of the royal and abbatial lands with which His Majesty (God preserve him) protects his vassals, as perquisites of his royal patrimony, appear and state: That, whereas I enjoy some property, acquired in the military service and by my own industry, without owning a place upon which to locate and bring them together (*centruarlos*), I apply to the superior authority of your excellency (with prior permission of my father) in order that, pursuant to the provisions of the national laws and the terms of the royal cedula of February 14, 1805, the depopulated place down the San Pedro River situate in this province, toward the north, on the hostile frontier, close to the abandoned place of Las Nutrias, be considered as registered, in virtue of which I protest that I will enter into composition with His Majesty (God preserve him) and will pay the quota or cost of its purchase, the royal half annate tax, and whatever else may be necessary, for such is rigorous justice with relation to what is stated. In this understanding I pray you to issue com-

mission for the execution of the necessary proceeding, ocular examination, reconnoissance of the ground, survey, appraisement, publication, possession, and final sale of the four sitios, which will be surveyed for me in a square or oblong figure, according to the length or extent of the land and its direction, and in these terms I pray your excellency to defer to my just petition, by which I shall receive grace. I protest costs and whatever is necessary, etc."

March 12, 1821, this petition was referred by the governor intendente for survey, appraisement and other customary proceedings, and for citation to the adjoining owners, with instructions to return the proceedings, when completed, for further action. On May 3, 1821, a promotor fiscal, appraisers and recorder of courses were appointed by the constitutional alcalde of the district and judge surveyor of that registry, who accepted their positions, took the proper oaths, and were duly commissioned. On the same day publication of notice was had to all whose rights might be affected to appear at the house of San Pedro, the place of the proposed purchase; in response to which one Antunes of the place of Terrenate, claiming certain sitios in the vicinity, appeared and objected that if the survey went up the river, or south, (the river ran north,) from the house of San Pedro, it would interfere with his rights, to which Perez' attorney objected, on the ground that if the survey went down the river, or north, it would deprive Perez of the benefit of the water from the marsh, which was the mother of those pastures. The matter was compromised by an agreement to divide the water of the marsh. This part of the expediente is of importance in respect of the contention that the entire grant was south of the boundary line between the United States and Mexico, and as to the starting point of the primitive survey.

The survey was then proceeded with from the place of San Pedro, and is set forth at length, and, having been concluded, the alcalde, May 21, 1821, directed that an appraisement and valuation be made by the appraisers previously appointed, who appraised the first three sitios at \$60 each, and the remaining one at \$10. Thereupon the alcalde, reciting that the "four sitios of land for live stock" had been appraised and valued, required the proceedings to be forwarded to the promotor fiscal for him to deduce, according to their condition, what he considered proper to the benefit of the public treasury. May 22 the fiscal directed the alcalde to make inquiry as to whether Perez had the qualifications required by law, and whether he had sufficient property to protect these sitios, and finally whether great advantage would result to the public treasury by their protection and settlement. Testimony was taken, and, the result of the inquiry being satisfactory to the fiscal, he directed, May 26, the publication for thirty days consecutively of the appraisement of said lands, and provided for bids thereon, and that the final sale and disposition of the land should be at Arispe, before the pro-

vincial board of the royal treasury, presided over by the governor intendente of the province. Publication was thereupon had, the first being as follows:

"On said day, month, and year, I, the judge surveyor, caused Lazaro Quijada, at the sound of the drum and in clear, loud, and distinct voice, to announce: It is made public and notorious that Don José Jesus Perez has registered the place of San Pedro, and, his petition being admitted, there were measured and located and sold four sitios of land for large stock, which were appraised and valued in the sum of one hundred and ninety dollars, in virtue of which every one who believes he has a well-founded right or desires to make a bid for the land mentioned may apply, as his bid will be admitted and his actions reserved till the day of the disposition and sale, which will be in Arispe on the day designated by the governor intendente of the province, to which end his actions and rights are reserved. And no bidder having appeared I entered it as a minute, which I signed, with those in my attendance, according to law, as I certify, and on this paper, without prejudice to the royal revenue."

The proclamations took place for thirty consecutive days, and no one appearing to outbid Perez, the alcalde and judge surveyor, June 26, 1821, transmitted to Antonio Cordero, the governor intendente, "the proceedings of survey, ocular inspection, appraisements, and publications executed on the depopulated tract of San Pedro in favor of Don José Jesús Peréz, for your excellency to make such order as may be just." The proceedings were referred to the promotor fiscal, and June 25, 1822, he reported favorably thereon, and recommended that the celebration of the three customary offers be proceeded with in the capital of the intendency, the city of Arispe, in solicitation of bidders for the final sale of said land. On July 3, 1822, this was ordered, and such offers were made July 3, 4 and 5, 1822, at Arispe. The land described in the first offer was "four sitios of royal land for raising cattle comprised in the place called San Pedro, situate in the particular territory of the presidio of Fronteras, surveyed for Don José Jesús Peréz, of this city, and appraised in the sum of \$190 at the rate of \$60 for the first three and \$10 for the other one."

The final offer of sale was as follows:

"In the city of Arispe, on the 5th day of the month of July, 1822, having assembled as a board of sale in this said capital, the intendente, as president, and the members who compose it, for the purpose of making the third and last offer of the lands to which these proceedings refer, they caused many individuals to assemble, at the sound of the drum and the voice of the public crier, in the office of this intendency and Loreto Salcido to proceed to make in their presence a publication, as he in effect did, similar in all respects to the one set out in the preceding offer, with only the difference of announcing to the public that the final sale is now to be made to the highest and best bidder. In which act appeared Don José Maria Serrano, as attorney of Don José Jesus Perez, again offering the value of the land, and the hour for midday prayer of this day

having already been struck, the public erier finally said: 'Once, twice, three times; sold, sold, sold; may they do good, good, good, to Don José Jesus Perez.' In these terms this act was concluded, the four sitios of royal land referred to in these proceedings being solemnly sold in favor of this party in interest for the sum of one hundred and ninety dollars, and in due witness thereof this minute was entered with the president and members of this board of sales, signed with the attorney, Don José Maria Serrano."

Thereupon the attorney of Perez prayed that "when the approval of the superior board of the treasury is obtained, there may be issued in favor of my party the corresponding title of grant and confirmation of the four sitios which said land contains, being prompt to appoint in Mexico a person under pay and expenses to be charged with managing the present matter at that court." July 6, 1822, the intendente *ad interim*, Bustamente, admitted Perez to composition with the imperial treasury for said royal land, and ordered that his attorney be notified to pay into the treasury the sum of two hundred and eight dollars, one grain; one hundred and ninety "as the principal value at which there were sold to said party in interest, the four sitios which said tract comprises;" and the remainder taxes and expenses. The provincial board of the imperial treasury approved the sale in favor of Perez the next day, describing the land as being "the four sitios of royal land for raising large stock which the place called San Pedro comprises." July 8, the sum of two hundred and eight dollars, one grain, was paid into the treasury at Arispe. No action appears to have been taken in the matter by the superior board of the treasury, and it remained as it was until October 25, 1832, when Ignacio Perez, on behalf of his brother José Jesus Perez, presented to the treasurer general of the State of Sonora a petition alleging that on July 5, 1832, there was sold in favor of his brother "the land called San Pedro, situated in the jurisdiction of Fronteras, including four sitios of land," and that he had lawfully exchanged the right he had thereto with citizen Rafael Elias, and requesting that inasmuch as the corresponding title to the land had not yet been issued, he might be pleased to order that title issue to said citizen Rafael Elias "as the actual owner and proprietor of the land of San Pedro." On that day the treasurer general transmitted to the governor of Sonora the proceedings "comprehensive of the registry, survey, appraisement, publications, and sale of four sitios of land, at the place called down the San Pedro River, in favor of citizen José de Jesus Perez;" that Perez had paid into the treasury "the sum of two hundred and eight dollars, one grain, for the principal value of the land and its corresponding taxes;" and that Perez desired the title to be issued to Rafael Elias, complying at the same time with article 27 of law No. 30 of May 20, 1825; and the treasurer reported that he considered the proceedings sufficient. October 31, 1832, Ignacio Bustamente, governor of Sonora, returned the proceedings with this com-

munication: "Having examined the proceedings on the lands which your excellency transmits with your note of the 25th ultimo, comprehensive of four sitios surveyed at the place called down the San Pedro River, in favor of Don José Jesus Perez, I return it to your excellency for your excellency to issue to Don Rafael Elias a corresponding title for the grant, in view of the exchange Don Ignacio Perez of this place has made with him." Mendoza, thereupon, May 8, 1833, issued the grant, reciting: "Whereupon, in the exercise of the powers which the laws confer upon me, by these presents and in the name of the sovereign State of Sonora, I confer the grant in the form of four sitios of land for breeding large cattle and horses, which comprise the place named San Pedro, situate in the jurisdiction of the presidio of Santa Cruz, in favor of the citizen Rafael Elias, to whom I grant, give, and adjudicate these lands by way of sale, with all the privileges, guaranties, and stability which the laws provide, etc." And commanded that the officials "do not permit that the said interested party nor his successors be in any manner disturbed in their peaceful enjoyment, nor molested in the free use, exercise, proprietorship, dominion, and possession of the said four sitios of land which comprise the place named San Pedro."

In the proceeding for the denoucement of the overplus of the ranch of San Pedro subsequently had in Mexico, it is recited that the district judge "has before him the testimonio of the title of the grant of four sitios of land for raising large stock issued by the citizen treasurer-general of the State in the city of Arispe under date of 8th of May of the year 1833, José Manuel Mendoza, in favor of citizen Rafael Elias, and after payment of two hundred and eight dollars, one grain, which said Elias paid into the funds of said treasury as the value of the four sitios, expenses and fees of the title. The land is generally known by the name of ranch of San Pedro, in the jurisdiction of the town of Santa Cruz and near the presidio of Fronteras in the district of Magdalena." Plaintiff also introduced in evidence a copy of the titulo to the San Rafael del Valle grant. Oral evidence was introduced on both sides in respect of the original and subsequent surveys.

The government introduced a petition of the Eliases presented to the surveyor general, together with a map attached to such petition. The government also introduced the expediente of the proceedings of denoucement of the demasias of the ranch of San Pedro commenced July 8, 1880, on behalf of the Elias family. On that day Manuel Elias made a formal denoucement "of the overplus that may be in the ranch of San Pedro in the jurisdiction of the town of Santa Cruz in the district of Magdalena," of which ranch he alleged that he was a co-owner. After considerable delays and after securing by appeal a declaration of his right to proceed to such denoucement, Elias on June 1, 1882, secured the appointment of one Pedro Molera, who was directed to "proceed to the resurvey of the

ranch of San Pedro, after examination of its titles and citation of adjoining owners, marking on the ground as well as on the respective maps the lawful area (*cabida legal*) of said ranch and the overplus, (*demasias*), it may contain within its monuments, subjecting his operations to the general laws of July 22 and August 2, 1863." Molera accepted the appointment, and, July 19, 1882, appeared at the ranch of San Pedro. His report recited that before proceeding with the survey he found it necessary to make a reconnoissance of the land because the titles were decidedly obscure; and notwithstanding the person who made the ancient survey gave the distances, the courses were incomprehensible, and no description was given of the places the title cited. He then set forth what he did in respect of the general lines on which the grant should be located, and proceeded to lay off the *cabida total*, or entire area, within the exterior boundaries, so far as he could ascertain them. Having laid off the total area of 28,265.11 hectares running up to the international line on the north, Molera on July 28, 1882, proceeded to segregate the legal area (*cabida legal*), which was four square leagues. He described the methods he adopted, and from the map and field notes it appeared that the legal area was 7,061.61 hectares, which, deducted from the total area, left an overplus or *demasias* of 21,203.47 hectares. Orders were then given for the advertisement of the proceedings, and testimony was taken as to the qualifications of Elias to secure the property. In April, 1884, the district judge at Guaymas recited that it appeared that the ranch of San Pedro belonged to various owners, who under the law had equal rights to the *demasias*, and ordered that Manuel Elias be notified to state whether or not he consented that said *demasias* should be adjudged to him in company with the other owners, and thereupon it was consented that the *demasias* should be adjudged to all the owners. November 18, 1884, the value of the *demasias* was fixed, but no price was fixed for the *cabida legal*, since that part of the survey belonged to the original parties. The order of the district judge recites that having examined the proceedings of survey and the map, both made by the surveyor, Pedro Molera, from which it appears that there is a total area of 28,265.11 hectares, of which 7,061.64 hectares are covered by title and 21,203.47 hectares are *demasias*, and, having examined the other proceedings, decreed the adjudication of said overplus to José Maria, Manuel, and the heirs of José Juan Elias in third parts, subject to the approval of the department of public works. The proceedings were transmitted to that department at Mexico, and an error having been found in the calculations were returned with orders to the surveyor to repeat the survey and correct the error. Molera again went into the field, and on March 19, 1887, made a recalculation of the *cabida total*, with the result that the overplus was found to be 21,231 hectares and a fraction instead of 21,203 and a fraction.

The correct valuation was thereupon made and the proceedings again sent to Mexico. May 3, 1887, the department of public works recited that they had examined the survey of the so-called *demasias*, and observed that on such survey "no monuments were found that would determine the limits or boundaries of said ranch," and that the courses indicated in the primitive survey were so confusing that in "attempting to follow them one goes and returns repeatedly over the same line without it being possible to circumscribe with this data any perimeter whatever." It was accordingly found and ordered that the ranch of San Pedro had no known boundary or boundaries that could be determined, and consequently had no *demasias*, so that the land denounced was not *demasias*, but vacant public land; and that Molera made an arbitrary survey. The adjudication was therefore not approved, and the office of the chief of the treasury in the State of Sonora was directed to register the land and the public treasurer to enter into possession of it, except that part which had been sold to McManus & Sons, and for which the proper title had already been issued. This order was subsequently revoked as a matter of equity, and the purchase of the property allowed so far as not conflicting with the McManus grant. On July 4, 1887, on the petition of Elias, one Bonillas was appointed surveyor for the purpose of separating the McManus land from the land sought by Elias, and to make a report that would enable the final purchase of the balance by Elias' family to be effected. This survey gave the total area of the San Pedro ranch, after cutting off the McManus land, as 22,058 hectares, 11 ares, 8 centiares, from which subtracting the legal area (*cabida legal*) of 7,022 hectares, 44 ares, there remains an overplus of 15,035 hectares, 67 ares, 8 centiares. (Hectare = 2.471 acres.) February 24, 1888, the President of the Republic approved the adjudication of this overplus in favor of Elias and associates, and ordered the proper title to issue to them upon payment of the required amount. The proper amount was paid, and on October 15, 1888, Alejandro Elias, for the Elias heirs, receipted for the title of said *demasias*, issued by President Diaz, February 24, 1888.

The government also introduced in evidence the expediente of an adverse suit brought by Plutarco Elias respecting himself and his mother and brothers on the denouncement of the overplus of the Agua Priete grant made by Camou Brothers, in which, in deciding the matter, the district judge recited that the fact that the Elias family had already denounced a large area of *demasias* in the Republic of Mexico, and mentioned many other tracts denounced by them besides the overplus of the San Pedro ranch, and called attention to the fact that the Eliases in consequence of such denouncements had secured a larger grant than they were allowed to obtain under the law of July 22, 1863. He quoted from the regulations of the department of public works in which the method of

acquiring *demasias* and other vacant lands is set forth, and showed from the order of the department of public works that overplus within a grant rests on exactly the same basis as other public lands, except that under the provisions of the law of July 22, 1863, a preference in its purchase is given the owner of the legal area. The district judge held that the Elias family had no right to be admitted as denouncers since they had already obtained an area greater than that designated by law.

The Reloj Cattle Company was incorporated September 24, 1885, and various quit claims of the interests of the Elias heirs in eighteen thousand acres in the grant, described as being north of the boundary line, commencing with April 2, 1883, and down to October 13, 1885, were introduced by it as muniments of title. The cause was submitted June 2, 1899, and November 27, 1899, the court entered a decree rejecting the grant and dismissing the petition. The court held that the grant was one of four sitios only, and that the owners had secured full satisfaction from the Mexican government and within its territory of all that they were entitled to. Thereupon this appeal was prosecuted.

Mr. Chief Justice FULLER delivered the opinion of the Court:

Perez petitioned for the grant "pursuant to the provisions of the national laws and the terms of the royal cedula of February 14, 1805."

That cedula provided that, (for the reason "that the settlement of a *sitio* of a league in extent was very difficult for a person of large means, and that lands of large area were held without this legal obligation having been fulfilled to the prejudice of others,") "there should not be adjudicated nor granted more than three or four tracts (to the wealthy), and two to the poor;" "with the understanding that the lowest estimate was not to be less than ten dollars for lands without water, thirty for lands irrigable by means of wells, and sixty for those capable of regular irrigation." Reynolds, p. 72. Recognizing the limitation, Perez prayed for the sale to him of "the four sitios."

The entire proceedings were directed to the acquisition of four sitios. Four sitios were valued; four sitios were put up at the auctions; four sitios were purchased; four sitios were paid for; and four sitios were granted. The intention to convey only so much and no more is plain, and is controlling. The title of the grantee was limited to that quantity. *Ainsa v. United States*, 161 U. S. 208; *Ely's Administrator v. United States*, 171 U. S. 220; *United States v. Maish*, Id. 277; *Perrin v. United States*, Id. 292.

The *cabida legal*, or lawful area, was, therefore, four sitios or something over seventeen thousand three hundred and fifty acres, and this lawful area, "the four sitios," was described by Perez as "the depopulated place

down the San Pedro River, situate in this province, toward the north, on the hostile frontier, close to the abandoned place of Las Nutrias."

The primitive survey was had at the place of San Pedro, and Las Nutrias was two or three miles to the southwest. It is plain that the old house of San Pedro was in existence at that time. When Antunes appeared from the place of Terrenate, which was a short distance west of the house of San Pedro, he was willing that the survey should proceed "from the house of San Pedro down the river," (the river ran north or somewhat east of north,) while Perez claimed it should be located up the river to get the benefit of the water of the marsh. This dispute was compromised by agreeing to divide the water of the marsh, which lay some distance above the house of San Pedro. The starting point of the survey was plainly up the river from the house, and then the line ran below it, for the survey states: "I caused a monument to be placed at a rectangular corner, from which, taking the course southwest to northwest, there were measured and counted fifty cords, the last of which terminated down the river from the house, on the edge of the ford, on the bank." That the house of San Pedro was an important call in the location of the grant on the ground is unquestionable. That house was the ancestral home of the Elias family, and on that place some of its members still reside. It was and is in Mexico, several miles south of the boundary line. Accordingly when Manuel Elias made a formal denouncement, July 8, 1880, of the *demasias* there might be in the ranch of San Pedro, and it became necessary to mark the *cabida legal* on the ground, the Mexican authorities laid off the four sitios so as to embrace the San Pedro settlement. The omission of San Pedro from the lawful area of the San Pedro grant would have, indeed, been something remarkable. The owners of the grant thus obtained from Mexico full satisfaction of its *cabida legal*, and no legal or equitable claim therefor existed against the United States when this petition was filed.

In *Ainsa v. United States*, 161 U. S. 234, it was said: "We have referred to the proceedings of 1882, 1886, in Mexico, as furnishing persuasive evidence of the proper construction of this grant under Mexican law, and it may be further observed that the adjudication of the overplus required the location of the $7\frac{1}{2}$ sitios, which location Mexico, as the granting government, assumed it had the right to make, and made out of the land within its jurisdiction. In this way the grant was satisfied by the receipt of all the grantees had bought and were entitled to under the Mexican law, the result as to the overplus inuring to Camou's cotenants by the terms of his petition."

In *Ely's Administrator v. United States*, 171 U. S. 220, the court, referring to *Ainsa's* case, observed: "In that case it appeared that while the boundaries of the survey extended into the territory ceded by Mexico to the United States, the grantee had taken and was in possession of land still

remaining within the limits of Mexico to the full extent which he had purchased and paid for, and therefore no legal or equitable claim existed against the United States in reference to the land within the ceded territory." It is quite impossible to entertain the proposition that the Court of Private Land Claims should have adjudged to appellants another *cabida legal* on this side of the boundary line. According to the doctrine of *Ely's case* no different location could have been recognized if the entire area had been in this country.

Something is said in respect of the right to confirmation of the tract sued for treated as *demasias*. But, apart from other insuperable objections to that suggestion, such a claim would be imperfect for want of fulfillment of conditions, and barred by section 12 of the act of March 3, 1891.

Decree affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.